

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF SANDY BEACH ESTATES SUBDIVISION**

This declaration is made on _____, 2008, by Point Development, LLC, a Montana limited liability company (referred to in this declaration as the "Declarant").

WHEREAS, the Declarant is the owner of all of the property contained in the plat of the Sandy Beach Estates Subdivision in Sanders County, Montana, which is located in portions of the northeast quarter and Government Lot 3 of Section 1, Township 21 North, Range 30 West, P.M.M., Sanders County, Montana (referred to in this declaration as the "Subdivision").

WHEREAS, the Declarant wishes to impose various covenants, conditions, and restrictions on the Subdivision in order to protect and enhance the quality, attractiveness, and value of the lots in the Subdivision, and to provide for the operation, maintenance, repair, and replacement of Facilities in the Subdivision.

NOW, THEREFORE, Declarant hereby declares that all of the land in the Subdivision will be held, or sold and conveyed subject to the following covenants, conditions, easements and restrictions, which are for the purpose of maintaining a uniform and stable value, character, use, and development of the Lots in the Subdivision and providing for the operation, maintenance, repair, and replacement of Facilities in the Subdivision, which shall run with the title to the land in the Subdivision, and which will be binding on and for the benefit of all parties having any right, title or interest in the land in the Subdivision, and their heirs, successors and assigns.

**ARTICLE I
RESTRICTIONS ON USE OF LOTS**

Section 1.1 Residential use only. Lots may be used for single family residential purposes only.

Section 1.2 Re-subdivision. No Lot may be divided into two or more lots. However, if three or more lots are owned by the same Owner, the Owner may perform boundary adjustments and lot aggregations, as long as they result in a smaller number of lots.

Section 1.3 Permitted structures. No buildings may be constructed on any lot other than a single family residence with a separate garage or shop, no more than one storage shed, and other residential structures such as hot tubs or gazebos. All residences must be of a new construction, and each residence shall contain a minimum of 1200 square feet of total "living space", exclusive of attached garages, basements and open porches. No single-wide mobile home, double-wide mobile home, recreational vehicle, or trailer may be installed or used on any lot, except as permitted by Section 1.7.

Section 1.4 Building setbacks. All buildings on a Lot shall be set back a minimum of 25 feet from the road rights-of-way which adjoin the Lot and a minimum of 10 feet from the other boundaries of the Lot. However, if two or more Lots are owned by the same Owner, and a residence is constructed which crosses the boundaries between two or more lots, the setback requirements will only apply to the outside boundaries of the lots which are occupied by the residence.

Section 1.5 Commercial Activity. No trade, craft, business, profession, or commercial or manufacturing activity of any kind may be conducted in any Lot, except that arts, crafts, professions, or hobbies conducted solely by family members occupying the residence on the Lot will be permitted as long as the activity is solely contained in the residence and does not involve visits to the residence by customers of the business, or a significant number of deliveries to the residence. No goods, equipment, material, or supplies used in connection with any trade, service or business may be stored outside of the residence.

Section 1.6 Vehicles. All vehicles shall be parked in the garages, driveways, or designated parking areas on a Lot, and no vehicle shall be parked upon any Street for periods of more than one week. No outdoor assembly, maintenance, or repair work shall be performed on vehicles except washing and polishing. Construction equipment and similar machinery and trucks exceeding a capacity of one ton may not be regularly parked or kept on any Lot. Vehicles such as cargo trailers, recreational vehicles, travel trailers, campers, boats, snowmobiles, and ATV's may not be kept or stored on any Lot unless such vehicles are in a covered garage or are otherwise shielded from view. The

Association shall have the authority to promulgate safety rules and regulations regulating or restricting the types of vehicles that may be operated on the Streets or sidewalks within the Subdivision, including but not limited to golf carts, ATV's, motorcycles, motorbikes, skate boards, scooters and bicycles.

Section 1.7 Temporary use of recreational vehicles and trailers.

Recreational vehicles or travel trailers may not be occupied on any Lot, except that (i) before a residence is constructed on a Lot, the Owner of the Lot may live on the Lot in a recreational vehicle or travel trailer for up to three months of each year, (ii) the Owner of a Lot may live on the Lot in a recreational vehicle or travel trailer for a periods of up to nine months while a residence is being constructed on the Lot, and (iii) after a residence has been constructed on a Lot, recreational vehicles or travel trailers owned by friends or relatives of the Owner of a Lot may be parked on a lot for periods of no more than two weeks while the owners of the recreational vehicles or travel trailers are visiting the Owner of the Lot.

Section 1.8 Landscaping. All areas of Lots which are disturbed during construction shall be landscaped.

Section 1.9 Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot. No more than three dogs, cats, and other household pets which are allowed outside the house may be kept on any Lot, but there are no restrictions on the number of pets which may be kept on a Lot if the pets are kept inside the residence at all times. Dogs shall be leashed or fenced at all times when outside a residence. Owners shall be responsible to clean up after their pets. If a pet is dangerous or has annoyed neighbors, the Board may require its owner to keep the pet within the residence of the owner at all time, or remove the pet from the Subdivision.

Section 1.10 Nuisances. No unreasonably offensive or noxious activity shall be carried on upon any Lot, nor shall noises be made or anything done thereon which may be or become an unreasonable annoyance or nuisance to the neighborhood, including barking dogs.

Section 1.11 Garbage. No part of any Lot shall be used or maintained as a dumping ground or storage ground for rubbish, trash, garbage, old automobiles, or other wastes. All waste shall be immediately removed from any Lot. All household garbage must be kept in secure and sanitary garbage containers. Garbage containers shall be kept inside or in a concealed location except for on the day that garbage is picked up. If an Owner doesn't use a commercial garbage pickup service, the Owner of a Lot must remove all garbage, wastes, and trash weekly.

Section 1.12 Exterior Maintenance. Each owner of a structure shall be responsible to maintain the structure and the Lot in a manner consistent with its original design, including painting, repair, landscaping, and removing junk or unsightly cars, objects, trash and debris.

Section 1.13 Home address numbers. Home address numbers which are visible from the street are to be installed on each Lot, either on the residence or at the driveway entrance.

Section 1.14 Signs. No signs, billboards or advertising devices of any nature, except "For Sale" signs with a maximum size of 2'x3' shall be erected or maintained on any Lot; provided, however, the foregoing shall not apply to the business activities or advertising of Declarant, its agents or representatives, while any Lots remain unsold. The Association may erect signs or notices for identification purposes in accordance with applicable state and municipal laws or codes.

Section 1.15 Antennas, Poles and Other Structures. No antenna pole, and no satellite dish larger than 24", shall be erected unless approved by the Association.

Section 1.16 Lighting. All outdoor lighting shall be shielded and downward pointing. Lighting that is offensive or distracting to a neighbor shall be removed or moved so as not to be bothersome.

Section 1.17 Fuel tanks. Fuel tanks shall be installed underground or within the building structure or screened from view.

Section 1.18 Drainage Control. Reasonable precaution shall be taken during construction, and thereafter, to prevent erosion and drainage problems. All disturbed soil areas shall be revegetated within a reasonable time in such a fashion as to minimize erosion. Driveways shall be constructed so as not to interfere with drainage and shall include culverts of appropriate size to prevent obstruction of water flow. During construction, silt fence shall be installed. A stormwater plan shall be submitted to the Association prior to construction. This plan shall be completed by someone competent in the field.

Section 1.19 Fireworks and firearms. No fireworks or firearms may be discharged within the Subdivision

Section 1.20 Temporary Structures. No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding, shall be placed upon any Lot during construction or be used on any Lot at any time as a residence, either temporarily or permanently, except as permitted by Section 1.7.

Section 1.21 Water front activities. Each Owner agrees to control the activities of all those associated with the owner while they are using the community land, and adjacent water front land controlled by Avista so as not to disturb, harm or create a nuisance to others. This will include but not be limited to obeying Avista's rules regarding the use of its river front land, and keeping the areas clean from waste or garbage of all kinds including animal waste. The owner will pay for all costs associated

with cleaning messes they or their friends or associates leave at the fair market rates for the cleanup work at the time of the cleanup, and a minimum charge of one hour will be assessed for each cleanup needed. Each Owner agrees to monitor and take action to control their own music, watercraft and human actions in and out of the water so as not to create a disturbance for others.

Section 1.22 Weed Control. Noxious weeds, as listed by the State of Montana, shall be controlled so as to prevent the dissemination of seeds and avoid fire hazards. The Association shall be empowered to dispose of any noxious weeds on a Lot at the expense of the Owner if the Owner fails to comply with these provisions after reasonable notice. The expense, if any, incurred by the Association shall be a charge on the land and shall be a continuing lien upon the Lot until paid.

Section 1.23 Fire protection standards for buildings. Construction shall utilize only Class A or B fireproof roofing materials as rated by the National Fire Protection Association. Residents are encouraged to incorporate Firewise Guidelines into their landscape and home exterior choices. Firewise Guideline information can be obtained through Sanders County.

Section 1.24 Wildfire protection requirements. Defensible space firebreaks should be provided and maintained around each structure to comply with guidelines adopted by the Montana Department of State Lands.

Section 1.25 Wildlife. All outdoor garbage containers shall animal and windproof. All food products, including pet food, shall not be left out for extended periods, as not to be an attractant for wildlife.

ARTICLE II COMMON AREAS AND EASEMENTS

Section 2.1 Ownership and control of Common Areas. Upon the recording of this declaration the Declarant will transfer the Common Areas in the Subdivision to the Association, and thereafter the Association will own and have control over the Common Areas. The Owners will have an easement for the use and enjoyment of the Common Areas, subject to the requirements of this declaration and any rules and regulations adopted by the Association. No personal property may be left in a Common Area, and no improvements may be installed or constructed in a Common Area, without the written consent of the Association.

Section 2.2 Road easements. The Street Rights-of-Way are subject to an easement for the construction, use, maintenance, repair, improvement, and replacement of the Streets which run along the Street Rights-of-Way, and driveways which run from the Lots in the Subdivision to the Streets. The Owners of Lots in the Subdivision are entitled to use the Streets in the Street Rights-of-Way for access through the Subdivision.

Section 2.3 Walkway easements. The Walkways are subject to an easement for the construction, use, maintenance, repair, improvement, and replacement of pedestrian and bicycle trails (the "Trails") which run from the Street Rights-of-Way to the land located between the Subdivision and the Clark Fork River. The Owners of Lots in the Subdivision are entitled to use the Trails for access to the land along the river on foot, on horseback, or by bicycle. The Trails may not be used by motorized vehicles, except for emergency vehicles, and maintenance vehicles operated by the Association and its contractors.

Section 2.3 Utility easements. All Street Rights-of-Way shown on the plat of the Subdivision are subject to an easements for the installation, use, maintenance, repair, improvement, and replacement of underground utility lines.

Section 2.4 Drainage Swale easements. Certain Lots are subject to easements for Drainage Swales. The Owners of the Lots which are subject to easements for Drainage Swales take any action which impedes the flow of water along the Drainage Swales, including but not limited to (a) changing the topography of the ground in the Drainage Swales, (b) constructing any buildings or other structures in the Drainage Swales, or (b) planting landscaping, or allowing plants to grow naturally, which blocks the flow of water along the Drainage Swale. The Association will be entitled to enter the Lots which are subject to easements for Drainage Swales to take action to restore the flow of water along the Drainage Swales.

Section 2.5 Shared well easements. (a) Each pair of Lots in the Subdivision is subject to a "shared well easement" shown on the plat of the Subdivision. Each shared well easement is for the installation, use, maintenance, repair, improvement, and replacement of a water well, water pipelines, electric lines, and other equipment which supplies water to the pair of Lots which is subject to that shared well easement. The Lots which are subject to a shared well easement are also subject to (i) an easement for an electric line to the well from the most convenient source on one of the Lots which is subject to the shared well easement, and (ii) an easement for access to the well across the Lots which are subject to the shared well easement for the purpose of maintaining, repairing, improving, and replacing the equipment in the shared well easement by whatever route or routes will cause the least damage and inconvenience.

(b) The Owner of each Lot will keep the shared well easement on that Lot free of any landscaping or improvements which may interfere with the operation, maintenance, repair, improvement, or replacement of the equipment in the share well easement. If any such landscaping or improvements are damaged or must be removed in connection with the operation, maintenance, repair, improvement, or replacement of the equipment, the Owner of the landscaping or improvements will not be entitled to any reimbursement or compensation from the Owner of the other Lot which is subject to the shared well easement. However, any Owner who performs excavation in a shared

well easement will be responsible for restoring the surface of the ground and any grass to the condition it was in before the excavation.

(c) Each Owner will be responsible for one-half of the cost of maintaining, repairing, improving, and replacing the equipment in the shared well easement which is partly on that Owner's Lot, and for one-half of the cost of electricity for the well. If any of those costs are paid by one of the Owners, the other Owner will reimburse the Owner who paid the costs within thirty days after receiving a bill for those costs. If any such bill is not paid within thirty days, then the person who paid the costs will be entitled to interest on the amounts owed from the date that the bill was due at the rate which is four percent over the prime interest rate published in the Wall Street Journal on the date the bill was due, or on the first day thereafter that the prime interest rate is published. The Owners who are subject to a shared well easement will consult with each other concerning the maintenance, repair, improvement, and replacement of the equipment in the easement, but neither Owner will have the right to refuse to pay that Owner's share of any maintenance, repair, improvement, or replacement which is reasonably necessary in order to provide water service to the pair of lots.

(d) The Association is not responsible in any way for the wells and associated equipment located in the shared well easements.

Section 2.6 Major or minor improvements and maintenance. These actions shall be performed, when a simple majority of owners agree to have maintenance or capital improvements performed. However, these actions are limited by the resources of the Association as provided in Article III, above.

Long-Term Maintenance:

- (a) Buffer strips must be maintained so that channelization of storm water runoff does not occur.
- (b) All foot paths must be maintained to minimize erosion and promote ease of use. Eroded areas or areas with bare soil shall be seeded or mulched.
- (c) Fertilizers, pesticides and herbicides shall not be used in the buffer strip or other places to prevent nutrients, chemicals, wastes and other contaminants from entering the lake river or community water system.

ARTICLE III THE ASSOCIATION

Section 3.1 Formation of the Association. The Declarant has formed a Montana non-profit corporation named "Sandy Beach Estates Homeowners Association, Inc."

(referred to in this declaration as the "Association") to act as the homeowners association for the Subdivision.

Section 3.2 Purposes of the Association. The purposes for which the Association has been organized, as set forth in the Articles of Incorporation, include but are not limited to the following:

- (a) To promote the convenience, enjoyment, health, safety, and welfare of the Owners of the Lots;
- (b) To own, maintain, preserve, and improve the Common Areas, to construct, install, operate, control, maintain, repair, and improve the Facilities, and to provide the Owners with such services as they may approve;
- (c) To enforce the provisions of the Declaration;
- (d) To fix and levy assessments on the Lots, and to collect those assessments, in order to obtain funds with which to carry out the duties and obligations of the Association under the Declaration; and
- (e) To exercise all other rights and powers which the Association now has or may hereafter acquire under the corporation laws of the State of Montana.

Section 3.3 Membership in the Association. Every Owner will automatically be a member of the Association. An Owner's membership in the Association will commence when that Owner acquires a Lot, and will terminate when that Owner sells the Lot. Membership in the Association is an appurtenance to each Lot, and may not be transferred separately from each Lot. However, an Owner may grant an Occupant of its Lot a proxy to vote that Owner's membership during the Occupant's possession of the Lot. The proxy must be in writing, must be delivered to the Association, must specify whether the Occupant's right to vote the Owner's membership extends to all issues or only to certain specified issues, and must describe any other terms and conditions of the Occupant's proxy.

Section 3.4 Voting rights of Owners. The Owner or Owners of a Lot will have one vote with respect to that Lot at all meetings of the members of the Association, except that the Declarant will be entitled to four votes for each Lot which it owns until the Declarant becomes the Owner of less than twenty-five percent of the Lots. When two or more Persons are the Co-Owners of a Lot, the vote for that Lot shall be exercised as the Co-Owners may determine, but in no event may more than one vote be cast for each Lot, except by the Declarant as set forth in this section.

Section 3.5 Promulgation of Rules and Regulations. The Association will have the right, but not the obligation, to promulgate rules and regulations for use of the Lots and Common Areas in the Property. The Association will furnish each new Owner with

a copy of all of the Rules and Regulations then in effect. Before any amendment or addition to the Rules and Regulations goes into affect, the Association will deliver a copy of the amendment or addition to each of the Owners. The Association will maintain a conformed version of the Rules and Regulations which incorporates all amendments and additions to the Rules and Regulations, and will provide a copy of the conformed version of the Rules and Regulations to any Owner on request.

Section 3.6 Meetings. Annual and special meetings of the members of the Association shall be held and called as set forth in the by-Laws of the Association.

Section 3.7 Directors. The business and property of the Association shall be managed under the direction of the Board of Directors consisting of three directors who shall initially be elected by the incorporator of the Association and thereafter shall be elected by the members of the Association. Each director must be an Owner of a Lot. The manner of election of directors and their terms of office shall be as set forth in the by-laws of the Association.

ARTICLE IV ASSESSMENTS

Section 4.1 Each Owner's obligation to pay Assessments. The Owner or Owners of a Lot are obligated to pay Assessments levied on the Lot by the Association to pay the expenses of operating and maintaining the Common Areas and Facilities in the Subdivision and providing Services to the Lots.

Section 4.2 Timing of Assessments. The Board may levy Assessments at the following times:

(i) **Annual Assessments.** Before the beginning of each calendar year, the Association will prepare a budget covering all reasonably anticipated expenses for the coming year, including a reasonable allowance for contingencies and reserves, and will levy the amount required by that budget on the Lots as an annual Assessment. If the Association does not make an annual Assessment, an annual Assessment will be presumed to have been made in the amount of the previous year's annual Assessment.

(ii) **Extra Assessments.** At any time the Association may levy extra Assessments on the Lots to pay unanticipated expenses, to pay the cost of repairing, improving, or replacing the Common Areas or Facilities, or for other purposes considered necessary by the Association.

Section 4.3 Types of assessments. The Association may levy the following kinds of Assessments on Lots:

(i) **General Assessments:** General Assessments are Assessments which are levied on all of the Lots in the Subdivision, and which are the same amount for each of the Lots.

(ii) **Special Assessments.** Special Assessments are Assessments which are levied on less than all of the Lots in the Subdivision. Special Assessments can be the same amount for each of the Lots on which the Assessment is levied, or can be allocated between the Lots on which the Assessment is levied in a manner which is fair and reasonable in light of the purpose of the Assessment.

(iii) **Service Assessments.** Service Assessments are Assessments which are levied only on the Lots which benefit from or utilize a Service. Service Assessments can be the same amount for each Lot, or can be based upon the amount that the Lot uses the Service.

(iv) **Capital improvement Assessments.** Capital improvement Assessments are Assessments which are levied for more than one year to pay the cost of construction, reconstruction, repair, or replacement of a Facility, or to pay debt service on a loan obtained by the Association to pay such costs. Capital improvement Assessments can be levied either on all of the Lots in the Subdivision, or only on the Lots which benefit from the capital improvement.

Section 4.5 Approval of Assessments by the Owners. (a) The Association does not need to obtain the Owners' approval of Annual or Extra General Assessments levied to pay the following costs:

(i) Routine maintenance and repair of the Facilities.

(ii) Emergency replacement of portions of the Facilities which are damaged or destroyed.

(iii) Real estate taxes and assessments imposed on the Common Areas.

(iv) Premiums for insurance policies which in the judgment of the Association it is prudent or necessary for the Association to purchase.

(v) The maintenance of a reasonable allowance for contingencies and reserves for those purposes.

(vi) The costs of operating the Association, including the fees of attorneys, accountants, and other consultants.

(vii) Control of noxious weeds.

(b) The Association may not levy Special Assessments, Service Assessments, Capital Improvement Assessments, or General Assessments for purposes other than those described in the previous paragraph unless it obtains the written approval of the Owners of two-thirds of the Lots on which the Assessments will be levied.

Section 4.6 Payment of Assessments. (a) The Association will send each Owner a bill for each Assessment. The Association will specify whether each Assessment is payable in a single payment or in monthly, quarterly, or semi-annual installments, and will specify the due date or dates of the single payment or the installments. The Association may if it wishes charge interest on Assessments which are paid in installments rather than in a single payment.

(b) Any Assessment which is not paid within ten days after it was due will bear interest from the date it was due at an interest rate which is two percentage points higher than the base rate on corporate loans posted by at least seventy-five percent of the nation's thirty largest banks, as published in the Wall Street Journal on the due date of the Assessment. If the Wall Street Journal ceases to publish an equivalent interest rate on a regular basis, then the Association may select any other equivalent prime rate published in any other published source. Each Assessment payment will be applied first to accrued interest, if any, and then to the principal amount of the Assessment.

(c) In addition, the Association will have the authority to establish a late charge not to exceed five percent of each Assessment payment for Assessment payments which are not paid within ten days after they are due. This late charge will be in addition to any interest which accrues on Assessments which are not paid within ten days after they are due. The late charges are to reimburse the Association for the inconvenience and additional cost incurred because of the Owner's failure to pay the Assessment when it was due.

Section 4.7 Commencement date of Assessments. The obligation of the Owners to pay Assessments will commence on the date that the Declarant sells the first Lot.

Section 4.8 The lien of Assessments. (a) The Assessments levied on a Lot, together with accrued interest and late charges on unpaid Assessments, will be a continuing lien on the Lot which is senior and prior to all other liens except the following:

- (i) Liens and encumbrances recorded before this declaration;
- (ii) The lien of taxes and assessments levied by government entities; and
- (iii) The lien of a first mortgage or first trust indenture recorded before the due date of an Assessment.

This lien will attach to a Lot on the date that an Assessment levied on that Lot becomes due and payable, and except as provided in Paragraph (b) of this section, will continue as a lien on that Lot until the Assessment, together with any accrued interest and late charges, is paid off in full. Except as provided in Paragraph (b) of this section, this lien will not be affected by any transfer of the Lot, whether voluntary, by operation of law, by deed in lieu of foreclosure, or through foreclosure of a mortgage or trust indenture. The Association will not be required to record any claim of lien in order for this lien to attach to a Lot, but the Association may if it elects record a claim of lien in order to further confirm the existence of this lien.

(b) If a Person becomes the new Owner of a Lot as a result of the foreclosure of a first mortgage or first trust indenture on that Lot, then the foreclosure or trustee's sale proceedings may, at the election of the holder of the mortgage or the beneficiary of the trust indenture, transfer the Lot to the new Owner, and the heirs, successors, and assigns of the new Owner, free and clear of the lien of any unpaid Assessments which became due and payable before the transfer of the Lot to the new Owner.

Section 4.9 The personal obligation of Assessments. (a) The Assessments levied on a Lot, together with accrued interest and late charges on unpaid Assessments, will be a personal obligation of the Lot's Owner. If a Lot is transferred, whether voluntarily, by operation of law, by deed in lieu of foreclosure, or through foreclosure proceedings, then except as provided in Paragraph (b) of this section, both the former Owner and the new Owner will be jointly and severally liable for all unpaid Assessments which became due and payable on or before the date of the transfer, together with accrued interest and late charges on those unpaid Assessments. However, the former Owner will not be liable for any Assessments which become due and payable after the date of the transfer. If the new Owner pays any of the Assessments which became due and payable on or before the date of the transfer, then unless the new Owner and the former Owner have agreed otherwise, the new Owner can recover the amount of those Assessments from the former Owner. The Association will not be required to prorate the liability for Assessments to the date of the transfer, but the former Owner and the new Owner can agree between themselves to prorate the Assessments to the date of transfer.

(b) If a Person becomes the Owner of a Lot as a result of the foreclosure of a first mortgage or trust indenture, then the new Owner will not be personally liable for any of the Assessments which became due and payable before the date of the transfer of the Lot. However, the former Owner will continue to be personally liable for the Assessments which became due and payable before the date of the transfer.

Section 4.10 Assessment lists. (a) The Association will maintain the following lists, which will be available to the Owners and their authorized representatives for inspection and/or copying at any reasonable time:

(I) A list of all of the Lots which shows the name and address of the Owner or Owners of each Lot.

(ii) A list of all of the Lots which shows the Assessments levied against each Lot in past years and the current year.

(iii) A list of all of the Lots which shows the principal amount of Assessments levied against each Unit which have not been paid, and the unpaid interest, if any, which has accrued with respect to those Assessments. If a Lot has been transferred, the list will show the amounts owed only by the new Owner for periods after the date of transfer separately from the amounts, if any, owed jointly by the former Owner and the new Owner for periods before the date of transfer.

(b) Whenever a Person becomes the Owner of a Lot, the new Owner must notify the Association of that Owner's address. Each Owner will be responsible for notifying the Association of any changes in address.

Section 4.11 Certificate regarding payment of Assessments. At the written request of any Owner, the Association will provide that Owner with a certificate in recordable form signed by an officer of the Association which states whether any of the Assessments levied on that Owner's Lot have not been paid as of the date of the certificate, and if so the amounts and due dates of the unpaid Assessments, the interest which has accrued on the Assessments as of the date of the certificate, and the amount of interest which will accrue on the unpaid Assessments each day until they are paid. Neither the Owner nor any Person who subsequently purchases the Lot or obtains a mortgage or trust indenture on the Lot will be liable for any unpaid Assessments which are not disclosed by such a certificate, and the Lot will not be subject to a lien for any unpaid Assessments which are not disclosed by such a certificate.

Section 4.12 No exemptions from payment of Assessments. The Owner of a Lot will not be entitled to any reduction of or exemption from the Owner's obligation to pay the Assessments levied on that Lot because the Owner has not used portions of the Common Areas or Facilities, because the Owner has not constructed a dwelling on the Lot, or because the Owner has abandoned the Lot.

ARTICLE VII GENERAL PROVISIONS

Section 7.1 Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions and restrictions, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant, condition or restriction herein contained shall in no event be deemed a

waiver of the right to do so thereafter. Any court finding violation of any covenant shall have in addition to the foregoing remedies, the right to require abatement of the violation, including removal of any structures or improvements, at the expense of the Owner of the Lot or Lots on which the violation occurs. Further, Sanders County is hereby given the right to enforce any or all of the covenants, conditions and restrictions contained in this declaration as a party in interest. However, Sanders County shall not be subject to assessment for any costs whatsoever for the operation, maintenance, repairs, taxes or any other costs of any of the Lots or Streets within the Subdivision. The party ultimately prevailing in any action described in this Section (as evidenced by a final judgment for which no appeal is taken) shall be entitled to an award of reasonable attorneys' fees incurred in connection with the bringing of or defense of such action, both at trial and on appeal, and including the fees of paralegals and other law firm staff.

Section 7.2 Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no wise affect other provisions, which shall remain in full force and effect.

Section 7.3 Amendment. This Declaration may be amended by an instrument signed by the Owners of not less than two-thirds of the Lots and, if required, by Sanders County. Any amendment must be recorded with the Clerk and Recorder of Sanders County, Montana. An amendment of the plat of the Subdivision recorded in Sanders County, Montana shall not be deemed to be an amendment of this Declaration.

Section 7.4. Annexation. Additional residential property may be annexed to the properties with the consent of two-thirds of the members of the Association.

ARTICLE I DEFINITIONS

Section 8.1 "Articles of Incorporation" means the articles of incorporation of the Association which have been filed with the Secretary of State of the State of Montana, as they may be amended from time to time.

Section 8.2 "Assessment" means the charges levied on Lots by the Association pursuant to this declaration to pay the Common Expenses.

Section 8.3 "Association" means Sandy Beach Estates Homeowners' Association, Inc., a Montana non-profit corporation.

Section 8.4 "Common Areas" means all real property owned by the Declarant or the Association for the common use and enjoyment of the Owners, as shown upon the

recorded plat of the Subdivision, including the Street Rights-of-Way, the Walkway Rights-of-Way, and the Open Areas.

Section 8.5 “Common Expenses” include but are not limited to (a) the expenses of operating, maintaining, repairing, improving, and replacing the Common Areas and the Facilities, (b) the premiums for insurance policies covering the Project and the Association, (c) real estate taxes, if any, on the Common Areas, and (d) the establishment of reserve funds for the replacement of Facilities and for emergencies.

Section 8.6 “Declarant” means Point Development, LLC, a Montana limited liability company, and its successors and assigns, or any Person to whom the rights and responsibilities of the declarant under this declaration are transferred.

Section 8.7 “Drainage Swales” means the drainage swales located in the drainage swale easements shown on the Plat of the Subdivision.

Section 8.8 “Facilities” means the improvements and community facilities which are located in or adjacent to the Subdivision, and which are owned by the Declarant or the Association for the benefit of the Owners or are otherwise available for use by all of the Owners, including but not limited to the Streets, the Public Wastewater System, the Trails, and the Drainage Swales and other stormwater drainage facilities, including culverts. The wells and water lines located on the Lots are not Facilities.

Section 8.9 “Lot” means each numbered parcel of land shown on the plat of the Subdivision. The Common Areas are not Lots.

Section 8.10 “Occupant” means a Person or Persons, other than the Owner, in possession of a Lot.

Section 8.11 “Open Areas” means Open Area 1 and Open Area 2 which are shown on the plat of the Subdivision.

Section 8.12 “Owner” means a Person who owns a legal or equitable fee simple interest in a Lot, either individually or as a co-owner in any real estate tenancy relationship recognized under the laws of the state of Montana. The term “Owner” includes the buyer under a contract for deed, the trustee of a trust, and the grantor under a trust indenture, but does not include the seller under a contract for deed, the trustor or beneficiary of a trust, the lessee of a Lot, the trustee or beneficiary under a trust indenture, or any other person who holds an interest in a Lot as security for a debt or other obligation. The term “Owner” will include the Declarant as long as the Declarant owns any Lots.

Section 8.13 “Person” means a natural person, a trustee, a personal representative, a corporation, a partnership, a limited partnership, a limited liability

company, a joint venture, a government entity, or any other individual or entity capable of holding title to real property.

Section 8.14 “Public Wastewater System” means the common drainfields located in the Open Areas, the main sewer lines which run through the streets to the common drainfields, each service line stub and shut-off valve which runs from the main sewer lines towards or into a Lot, and all equipment and structures related to the common drainfields, main sewer lines, and service line stubs. The individual septic/dose tank for each Lot, and service line which runs from that tank to the shut-off valve for that Lot, are not part of the Public Wastewater System for the purposes of this declaration, and are the responsibility of the Owner of that Lot.

Section 8.15 “Rules and Regulations” means the rules and regulations, if any, adopted from time to time by the Association pursuant to these Bylaws, relating to the possession, use, and enjoyment of the Lots, the Common Areas, and the Facilities.

Section 8.16 “Services” means all services which the Association is required or may choose to provide to the Owners, including but not limited to septic service and maintenance of the Facilities and Common Areas.

Section 8.17 “Street Rights-of-Way” means the street rights-of-way shown on the plat of the Subdivision, which are subject to private road and public utility easements.

Section 8.18 “Streets” means the streets located in the Street Rights-of-Way. Driveways which run from the Streets into Lots are not “Streets” for the purposes of this declaration.

Section 8.19 “Subdivision” means the Sandy Beach Estates Subdivision in Sanders County, Montana.

Section 8.20 “Trails” means the pedestrian and bicycle trails which run through the Walkways.

Section 8.21 “Walkway Rights-of-Way” means Walk 1, Walk 2, and Walk 3 which are shown on the plat of the Subdivision, which are subject to private walkway easements.

Dated this _____, 2008

POINT DEVELOPMENT, LLC

By: _____
Kevin McGuire, Authorized Member

STATE OF MONTANA)

:SS

COUNTY OF _____)

This instrument was acknowledged before me on _____, 2008, by Kevin McGraw as an Authorized Member of Point Development, LLC.

Notary's signature: _____

Notary's name: _____

Notary public for the state of Montana

Residing at _____

My commission expires _____, 20__

**AMENDMENT TO SECTION 2.5 OF THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF SANDY BEACH ESTATES SUBDIVISION**

This amendment is made on AUGUST 26, 2008, by Point Development, LLC, a Montana limited liability company (referred to in this amendment as the "Declarant").

WHEREAS, on July 30, 2008, the Declarant recorded a Declaration of Covenants, Conditions and Restrictions (referred to in this amendment as the "Declaration") relating to the Sandy Beach Estates subdivision (referred to in this amendment as the "Subdivision") at Miscellaneous No. 6181 in the records of Sanders County, Montana.

WHEREAS, Section 7.3 of the Declaration provides that "This Declaration may be amended by an instrument signed by the owners of not less than two-thirds of the Lots and, if required by Sanders County."

WHEREAS, the Declarant is the owner of all of the lots in the Subdivision except for Lots 24 and 27.

WHEREAS, the Declarant wishes to clarify the provisions of Section 2.5 of the Declaration, which relates to shared well easements.

NOW, THEREFORE, the Declarant replaces Section 2.5 of the Declaration with the following provision:

Section 2.5 Shared well easements. (a) Each pair of Lots in the Subdivision except for Lots 15, 26, and 39 is subject to a "shared well easement" shown on the plat of the Subdivision. Each shared well easement is for the installation, use, maintenance, repair, improvement,

and replacement of a water well, water pump, water pipelines, electric lines, and other equipment which supplies water to the pair of Lots which is subject to/and or benefits from that shared well easement. The Lots which are subject to a shared well easement are also subject to (i) an easement for an electric line to the well from the most convenient source on one of the Lots which is subject to the shared well easement, and (ii) an easement for access to the well across the Lots which are subject to the shared well easement for the purpose of maintaining, repairing, improving, and replacing the equipment in the shared well easement by whatever route or routes will cause the least damage and inconvenience.

(b) The Owner of each Lot will keep the shared well easement on that Lot free of any landscaping or improvements which may interfere with the installation, operation, maintenance, repair, improvement, or replacement of equipment in the shared well easement. If any such landscaping or improvements are damaged or must be removed in connection with the installation, operation, maintenance, repair, improvement, or replacement of the equipment, the Owner of the landscaping or improvements will not be entitled to any reimbursement or compensation from the Owner of the other Lot which is subject to and/or benefits from the shared well easement. However, any Owner who performs excavation in a shared well easement will be responsible for restoring the surface of the ground and any grass to the condition it was in before the excavation.

(c) Wells have been drilled in each of the shared well easements. After the Owner of a Lot begins to use the water from the shared well which benefits that Lot, that Owner will be responsible for one-half of the cost of installing, maintaining, repairing, improving, and replacing the equipment in the shared well easement which benefits that Owner's Lot. The pump installed in each shared well will be large enough to serve both Lots which benefit from that well, but will not be larger than 35 gallons per minute. A flow meter will be installed in each water line running from a shared well, and the Owner of each Lot which receives water from that well will be responsible for paying the percentage of the electrical bill for the well which is the same as the percentage of the water which is provided to that Owner's Lot. If flow meters are not installed in the water lines running from a shared well, then the Owner of each Lot which receives water from that well will be responsible for paying one-half of the cost of the electricity for the well. If any of those costs are paid by one of the Owners, the other Owner will reimburse the Owner who paid the costs within thirty days after receiving a bill for those costs. If any such bill is not paid within thirty days, then the person who paid the costs will be entitled to interest on the amounts owed from the date that the bill was due at the rate which is four percent over the prime interest rate published in the Wall Street Journal on the date the bill was due, or on the first day

thereafter that the prime interest rate is published. The Owners who are subject to and/or benefit from a shared well easement will consult with each other concerning the installation, maintenance, repair, improvement, and replacement of the equipment in the easement, but neither Owner will have the right to refuse to pay that Owner's share of any maintenance, repair, improvement, or replacement which is reasonably necessary in order to provide water service to the pair of Lots, if that Owner is using water from the well.

(d) Within 60 days after the Owner of a Lot begins to use water from the well or shared well which benefits that Lot, the Owner will file a Notice of Completion of Groundwater Development with respect to the well, or take whatever other action is then required by Montana law to obtain a certificate of water right for the benefit of that Lot. When two Lots share a well, the Owner of each of the Lots will claim the full capacity of the pump in the well, and will notify the Montana Department of Natural Resources and Conservation of that fact in the notice. When the Owner of a Lot which benefits from a shared well files a notice which complies with this requirement, the Owner of the other Lot which benefits from the shared well will consent in writing to the notice.

(e) The Association is not responsible in any way for the wells and associated equipment located in the shared well easements.

The Declaration will remain in full force and effect, and will continue to be enforceable in accordance with its terms, as amended by this amendment.

Dated this 8-26, 2008

POINT DEVELOPMENT, LLC

By: 

Kevin McGraw, Authorized Member

