



Larry D. Ehmen, County Recorder

Adams County Abstract

**DECLARATION OF COVENANTS, CONDITIONS,  
EASEMENTS AND RESTRICTIONS FOR  
BONITA POINTE PHASE II**

THIS DECLARATION, is made as of this 9<sup>th</sup> day of September, 2004, by Kenneth A. Heming and Bonnie S. Heming, husband and wife, hereinafter referred to as the "Declarants".

WITNESSETH THAT:

WHEREAS, the Declarants are the owners of all of the lands contained in the area known as "Bonita Pointe Phase II" (herein "Subdivision"), as shown and described on the plat thereof recorded on August 25, 2004, in Book 704 at Page 10462, in the Office of the Recorder of Deeds in and for the County of Adams, State of Illinois (herein the "Plat"); and,

WHEREAS, Bonita Pointe Phase II consists of the following described real estate:

Lots One (1), Two (2), Three (3), Four (4) and Five (5) of Bonita Pointe Phase II, a Subdivision of a part of the Northeast Quarter of the Northwest Quarter of Section Eight (8), in Township Two (2) South of the Base Line, Range Seven (7) West of the Fourth Principal Meridian, Adams County, Illinois, EXCEPT that part of such lot constituting a part of Bonita Pointe Lake, a lake, the normal pool water elevation of which is at an elevation of 698.00 feet above mean sea level, and generally depicted on the Plat of Bonita Pointe Phase II, recorded in Book 704 of Plats, at Page 10462, in the Office of the Recorder of Deeds in and for the County of Adams, and State of Illinois, and subject to easements and restrictions as shown on the Plat of said Subdivision recorded in Book 704 of Plats, at Page 10462, and to the Articles of incorporation of Bonita Pointe Association, situated in the County of Adams, in the State of Illinois; and,

WHEREAS, Declarants desire to subject and impose upon the Subdivision mutual and beneficial restrictions, covenants, conditions, easements, liens and charges hereinafter referred to as the "Restrictions" for the benefit and the complement of all of the lots in the Subdivision and the future owners thereof.

NOW, THEREFORE, the Declarants hereby declare that the real property located within the Subdivision shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the following Restrictions, all of which are declared and agreed to be in furtherance of a common plan for improvement of the Subdivision,

established by the Declarants for the purpose of enhancing and protecting the value, desirability and attractiveness of the Subdivision as a whole and of each lot and parcel situated thereon. All of these Restrictions shall run with the land and shall be binding upon the Declarants and upon all parties having or acquiring any right, title or interest in and to the real property or any part or parts thereto (such persons being sometimes hereinafter referred to as "Owners").

1. RESIDENTIAL CHARACTER OF THE SUBDIVISION:

A. IN GENERAL: Every numbered lot in Subdivision is a residential lot and shall be used exclusively for single family residential purposes. No building or structure shall be erected, placed or permitted to remain upon any of said lots other than one (1) single family dwelling and an attached private garage. No outbuildings of any sort shall be located on any lot. An attached private garage must be provided for each lot. "Family", for purposes hereof, shall mean an individual or two (2) or more persons related by blood, marriage or adoption, living together as a single housekeeping unit, or a group of two (2) or more persons all of whom are related by blood, marriage or adoption, except that the group may include one (1) person not so related, living together as a single housekeeping unit.

B. OCCUPANCY OR RESIDENTIAL USE OF PARTIALLY COMPLETED DWELLING HOUSES PROHIBITED: No dwelling house constructed on any of said lots shall be occupied or used for residential purposes or human habitation until it shall have been substantially completed. The determination of whether or not a house shall have been "substantially completed" shall be made by the "Architectural Trustee's hereinafter described, and the decision of that Committee shall be binding on all parties concerned.

2. RESTRICTIONS CONCERNING SIZE AND PLACEMENT OF DWELLING HOUSES AND OTHER STRUCTURES AND THE MAINTENANCE THEREOF:

A. MINIMUM LIVING SPACE AREAS: No dwelling shall be constructed on any lot in the Subdivision exceeding the height hereafter stated having less than the following minimum square footage of living space, exclusive of porches (whether or not enclosed by screens or otherwise), breezeways, terraces, garages, car ports and other buildings:

The dwelling located on any lot shall not exceed two and one-half (2-1/2) stories in height. The ground floor area of the dwelling, exclusive of open porches, breezeways, terraces, garages and car ports, if any, shall not be less than one thousand five hundred (1,500) square feet for a one (1) story dwelling. If more than one (1) story, there shall be a minimum ground floor of at least one thousand one hundred (1,100) square feet. No minimum shall apply above the first story. However, the dwelling shall have a total of at least one thousand five hundred (1,500) square feet. In determining the amount of square footage contained within a house, there shall not be taken into consideration any area which is wholly or substantially below ground level including, but not limited to, any basement.

A garage shall be provided for each dwelling which contains at least five hundred fifty (550) square feet for all lots.

The roof of each dwelling shall have a pitched roof. Such pitch shall be not less than a seven feet - twelve feet pitch.

B. SET-BACK REQUIREMENTS:

(i) In General: Except as may be otherwise provided in these restrictions or on the Plat, no dwelling house or above grade structure shall be constructed or placed on any numbered lot

in the Subdivision (except fences or walls, the placement of which is provided for hereinafter) nearer to any lot line than the minimum building setback lines shown on the recorded Subdivision Plat, the provisions set forth herein, or applicable building or subdivision codes or restrictions, whichever is more.

(ii) Front Yards: No building shall be located on any lot nearer to the front lot line or nearer to the side Street line than the minimum building setback lines shown on the recorded subdivision plat or twenty-five (25) feet, whichever is more.

(iii) Side Yards: The side yard set-back line shall not be less than ten (10) feet from the sideline of the lot.

(iv) Rear Yards or Lake Side: The minimum rear set-back line shall be a minimum of fifty (50) feet. However, the minimum set-back line from Bonita Pointe Lake shall be fifty (50) feet from the normal high water marks of said Lake, which is at an elevation 698.00 feet above mean sea level. The level is generally shown on the Plat of the Subdivision. However, if the dwelling house and above grade structures are located on grades which are at an elevation of at least ten (10) feet above said mean sea level, the dwelling house and above grade structures may be located at least at such elevations but not nearer than thirty (30) feet from the normal high water mark of said Lake abject to the minimum rear set-back line.

C. FENCES, WALLS, HEDGES, ETC.: In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within the Subdivision, all property lines shall be kept free and open one to another and no fences or walls shall be permitted on any lot or lot lines except where, in the opinion of the Architectural Trustee (as hereinafter described), a fence, wall or other enclosure, as a structure or aesthetic feature of a design concept, will contribute to and be in keeping with the character of the area. In such cases, the Architectural Trustee shall determine the size, location, height and composition of the fence, wall, hedge or other enclosure. Border hedges, shrubbery or other similar plantings may be used, but shall not overhang the lot line or exceed a height of fifteen (15) feet. Pines and other evergreens planted within fifteen (15) of the property line shall not be permitted to attain a height in excess of twenty-five (25) feet.

D. CONSRUCTION MATERIALS: The finished exterior of every building constructed or placed on any numbered lot in the Subdivision shall be of material other than tar paper, rollbrick siding or any other similar material. Mobile homes (whether or not modified so as to be rendered immovable) and the like may not be located on any lots. Pre-cut dwellings are permitted if approved by the Architectural Trustee and otherwise consistent with these Restrictions. Not less than forty percent (40%) of the front of the dwelling, exclusive of windows and doorways, shall be of brick or stone.

E. DILIGENCE IN CONSTRUCTION: The exterior of every building whose construction or placement on any numbered lot in the Subdivision is begun shall be completed within twelve (12) months after the beginning of such construction or placement, unless prevented by weather or Act of God or because of the size or nature of the construction project. No improvement which has partially or totally been destroyed by fire or otherwise shall be allowed to remain in such state for more than three (3) months from the time of such destruction or damage.

F. PROHIBITION OF USED STRUCTURES: All structures constructed or placed on any numbered lot in the Subdivision shall be constructed with a substantial quantity of new materials and no used structures shall be relocated or placed on any such lot.

**G. MAINTENANCE OF LOTS AND IMPROVEMENTS:** The owner of each lot in the Subdivision shall at all times maintain said lot and any improvements situated thereon in such a manner so as to prevent said lot or improvements from becoming unsightly; and, specifically, such owner shall:

(i) Mow said lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds thereon.

(ii) Remove all debris or rubbish from said lot.

(iii) Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of said lot.

(iv) Cut down and remove dead or diseased trees from said lot.

(v) Where applicable, prevent debris or foreign material from entering Bonita Pointe Lake.

(vi) When such debris or foreign material has entered Bonita Pointe Lake from said lot, to remove the same immediately.

(vii) Keep the exterior of all improvements constructed on said lot in such a state of repair or maintenance as to avoid their becoming unsightly.

(viii) Keep and maintain driveways, entranceways and parking areas for a lot dust free from and after not later than one (1) year following the initial occupancy of a dwelling.

**H. DIRT:** No dirt shall be removed from the Subdivision without the approval of the Architectural Trustee. Should any lot owner have dirt to be removed from the lot, it shall be located at such owner's expense to another location within the Subdivision or adjacent to the Subdivision approved or designated by the Architectural Trustee.

**I. ASSOCIATION'S RIGHT TO PERFORM MAINTENANCE:** In the event that the owner of any lot in the Subdivision shall fail to maintain said lot or any improvements situated thereon in accordance with the provisions of these restrictions, and any By-Laws of Bonita Pointe Association (as is hereinafter described), which from time to time may be in effect, and which may be relevant to these restrictions, said Association shall have the right, by and through its agents or employees or contractors to enter upon said lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such lot and the improvements situated thereon (if any), conform to the requirements of these restrictions. The cost, therefore, to the Association shall be added to and become a part of the annual charge or a separate charge to which said lot is subject, and may be collected in any manner in which a charge may be collected. Neither the Association nor any of its agents, employees, or contractor shall be liable for any damage which may result from any maintenance work performed hereunder.

**3. GENERAL PROHIBITIONS:**

**A. IN GENERAL:** No noxious or offensive activities shall be carried on any lot in the Subdivision, nor shall anything be done on any of said lots that shall become or be an unreasonable annoyance or nuisance to any owner of another lot in the Subdivision.

B. SIGNS: No sign of any kind shall be displayed to the public view on any lot except one (1) professional sign of not more than one (1) square foot, one (1) sign of not more than five (5) square feet advertising the property for sale, or signs used by a builder to advertise the property during construction and sales period.

C. ANIMALS: No animals, livestock, swine or poultry of any kind shall be kept, raised, bred or maintained on any lot in the Subdivision, except the usual household pets, provided such household pets are not kept, raised, bred or maintained for commercial purposes, provided further that they are not wild or dangerous or considered ferae naturae by law, provided further that they are not kept outside the dwelling whether temporarily or permanently, and provided further that they are not permitted to be outside the dwelling except in the presence of the owner, keeper or person designated by the owner or keeper and on a leash (such leash not to exceed twelve (12) feet in length). Without limiting the scope of wild and dangerous animals, they specifically include snakes, bears and foxes.

D. DISPOSAL OF GARBAGE, TRASH AND OTHER LIKE HOUSEHOLD REFUSE: No owner of any lot in the Subdivision shall burn or permit the burning out of doors of garbage, trash or other like household refuse, nor shall any such owner accumulate or permit the accumulation out of doors of such refuse on his lot, except as may be permitted in subparagraph E, below.

E. CONCEALMENT OF FUEL STORAGE TANKS AND TRASH RECEPTACLES: Every tank for the storage of fuel that is installed outside any building in the Subdivision shall be buried below the surface of the ground in accordance with applicable law, located in a below-ground pit, or screened to the satisfaction of the Architectural Trustee, by fencing, shrubbery or other means. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed underground or shall be so placed and kept as not to be visible from any street or lake within the Subdivision at any time, except at the times when refuse collections are being made.

F. RESTRICTIONS ON TEMPORARY STRUCTURES: No temporary house, trailer, garage or other outbuilding shall be placed or erected on any lot, but this shall not prohibit reasonable construction vehicles or trailers during the course of construction.

G. PARKING: Trucks, trailers, boats, motorized recreational vehicles, attachable vans, mobile campers and similar equipment of eight thousand (8,000) pounds or less each may be kept in the subdivision, provided they are kept in the attached garage provided for a dwelling except for temporary periods only not exceeding thirty-six (36) continuous hours. Trucks, trailers, boats, motorized recreational vehicles, attachable vans, mobile campers and similar equipment exceeding eight thousand (8,000) pounds each may not be kept in the subdivision.

H. DOCKS, PIERS, ETC.: No pier, dock or other structure may be constructed in such a manner that any portion thereof extends more than twenty (20) feet from the normal lake level marks for Bonita Pointe Lake, as previously described, and in no event shall any pier, dock or other structure be erected (even within these limits) without prior written permission of the Architectural Trustee hereinafter described.

I. BOATING RESTRICTIONS: Power boating activities on the lake will be limited to outboard type boats powered by electric motors only. Horsepower of boats powered by electric motors to be limited to five (5) H.P. Rowboats, canoes, and small sailboats (of the "day sailor" class) are also permitted. No boat shall be equipped with facilities which will discharge any waste materials into the lake.

J. DITCHES AND SWALES SHALL NOT BE OBSTRUCTED: It shall be the duty of every owner of every lot in the Subdivision on which any part of an open storm drainage ditch, stream or swale is situated to keep such portion thereof as may be situated upon his lot continuously unobstructed and in good repair, and to provide for the installation of such culverts upon said lot as may be reasonably required to accomplish the purposes of this sub-section.

K. INSTALLATION OF UTILITY SERVICES:

(i) All utility lines and apparatus provided to or in the Subdivision, including, but not necessarily limited to, water, sewer and gas pipes, telephone, cablevision, community antenna services, and power lines and conduits, shall be buried below ground, except utility pedestals and transformers required to be above ground.

(ii) Sanitation systems serving properties, whether sewer or septic systems, shall conform to all federal, state and local laws or ordinances.

L. OIL AND MINING OPERATIONS: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

M. SATELLITE, ETC., RECEPTION: No satellite, antenna or other reception equipment or devices shall be located on any lot except as may be approved by the Architectural Trustee. In no event shall any such equipment be located in any required front, side, rear or lake side yards or set-back areas. Satellite discs or dishes shall not exceed a diameter of twenty inches (20) unless specifically approved by the Architectural Trustee,

4. ARCHITECTURAL CONTROL:

A. POWERS:

(i) Generally: No building, building structure or improvement of any type or kind may be constructed or placed on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Trustee as to quality of workmanship and materials, harmony of external design with existing structures, compliance with these covenants, and as to location with respect to topography and finish grade elevation. It is intended that the Architectural Trustee when considering approval of plans and specifications may consider reasonable factors beyond those set forth in these covenants appropriate to the overall development of the subdivision.

(ii) Power to Grant Variances: The Architectural Trustee may allow reasonable variances or adjustments of these Restrictions where literal application thereof would result in unnecessary hardship, provided, however, that any such variance or adjustment is granted in conformity with the general intent and purposes of these Restrictions and also, that the granting of a variance or adjustment will not be materially detrimental or injurious to other lots in the Subdivision.

B. ARCHITECTURAL TRUSTEE: The Architectural Trustee is Kenneth A. Heming. The Architectural Trustee may designate a representative to act for him. In the event of the death, resignation or inability to act of Kenneth A. Heming, Bonnie S. Heming shall then be the Architectural Trustee with full authority to act. In the event of the death, resignation or

inability to act of both Kenneth A. Heming and Bonnie S. Heming, a successor trustee may be designated by a majority of the then owners of the lots determined as provided in paragraph 13, below. The designation of the trustee shall be recorded in the Records Office of Adams County, Illinois.

C. PROCEDURES: The approval or disapproval as required in the covenants shall be in writing. In the event the Architectural Trustee, or the Trustee's designated representative, fails to approve or disapprove any plans or specifications within thirty (30) days after such plans and specifications have been submitted to the Trustee, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

D. ASSOCIATION: At such time as a dwelling is constructed on each lot within the Subdivision, the continuing function of the Architectural Trustee shall transfer to the Board of Directors of the Bonita Pointe Association.

E. LIABILITY OF TRUSTEE, ETC.: Neither the Architectural Trustee nor any agent thereof, nor the Declarants, nor the Association, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

F. SPECIAL PROVISIONS CONCERNING PIERS: When the Architectural Trustee shall permit the construction or placing of a structure wholly or partly within Bonita Pointe Lake, such permits shall constitute a mere license from the Declarants or its successors in title to the lake which may be terminated or restricted at any time.

#### 5. EASEMENTS:

The Declarants create and reserve unto themselves, their successors and assigns, certain easements along, across, over, under and upon the real estate that constitutes the Subdivision. The easements so reserved by the Declarants include those set forth on the Subdivision Plat and as follows, together with reasonable ingress and egress over and across lots to and from easement areas:

A. DRAINAGE AND UTILITY: Easements for drainage and for the location, construction, establishment, maintenance and operation of all utilities and accessories and for other purposes are reserved as shown on the recorded Subdivision Plat. Within these easements, no permanent building, structure, planting or other improvement shall be placed or permitted to remain which may damage or interfere with the installation, location, maintenance and replacement of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and adjoining public areas, if any, shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible. "Utilities" for purposes thereof shall include, but not be limited to, water, sewer, gas, electric, cablevision, community antenna services and similar services provided to lots and any pipelines, conduits, wires, pedestals, transformers or other items and accessories necessary to conduct or provide such utilities. It also includes the construction, maintenance and operation of sand filter or collection lines, provided that private sand filter lines and related systems shall be kept within the lot served by the system except the collection lines shown on the subdivision plat.

B. SHORELINE MAINTENANCE: Declarants further reserve for themselves, their successors, assigns and licensees for the Bonita Pointe Lake and shoreline maintenance and control along that portion of each lot contiguous to the shoreline of the Lake, an easement twenty (20) feet wide. Any such lot shall also be subject to a flowage easement to an elevation on the lot equal to the high water elevation of the respective Lake.

C. STABILIZATION: Each lot shall further be subject to an easement for the maintenance and permanent stabilization control of slopes.

D. BONITA POINTE LAKE LEVEE: Easements for the installation, location, maintenance and replacement of the Levee or dam for the Bonita Pointe Lake are reserved as located. It is specifically required, however, that the owner of any lot on which the Levee is located shall be responsible for mowing or preventing the unsightly growth of vegetation and noxious weeds thereon. Declarants, or their successors and assigns, may also do so as well in their discretion.

E. LAKE: Easements regarding the Lake are also reserved as provided in Paragraph 9.

F. ACTION: No owner of any lot in the Subdivision shall have any claim or cause of action against Declarants, their successors, assigns or licensees, either in law or in equity, and arising out of the exercise of any easement reserved hereunder, excepting in cases of willful or wanton negligence.

G. TRANSFER: Declarants may at any time convey, transfer, grant, relinquish or assign the easements or rights provided in this paragraph or otherwise under this instrument to the Bonita Pointe Association.

6. RULES GOVERNING BUILDING ON SEVERAL CONTIGUOUS LOTS HAVING ONE OWNER:

A. MULTIPLE LOTS: Whenever two (2) or more contiguous lots in the Subdivision shall be owned by the same person, and such person shall desire to use two (2) or more of said lots as a site for a single dwelling house, the person shall apply in writing to the Architectural Trustee for permission to so use said lots. If written permission for such a use shall be granted, the lots constituting the site for such single dwelling house shall be treated as a single lot for the purpose of applying these Restrictions to said lots, so long as the lots remain improved with one single dwelling house.

B. REDIVIDED OR MODIFIED LOTS: Lots may be redivided to increase the size of adjoining lots but not to create new lots. If redivided, the appropriate adjoining lot combined with the redivided lot shall thereafter be treated as a single lot with side-yard and other setback lines considered appropriately altered. Nothing in this Declarations shall preclude and it is recognized that conveyances to the Subdivision will not include Bonita Pointe Lake.

7. OWNERSHIP, USE AND ENJOYMENT OF THE BONITA POINTE LAKE:

The Subdivision has located therein a lake and additions to the Subdivision may also adjoin the lake or have other lakes. The lake in the Subdivision as initially developed is known as Bonita Pointe Lake. References herein to "lake" include Bonita Pointe Lake and any other lake or lakes located in any addition to the Subdivision.

The lake is and shall remain private, and neither the Declarants execution or recording of the Plat nor the doing of any other act by the Declarants is, or is intended to be, or shall be constructed as, a dedication to the public or the lake or other amenities. A license upon such terms and conditions as Declarants, their successors, assigns or licensees shall from



time to time grant, for the use and enjoyment of each of said lake, or other amenities, is granted to the persons who are from time to time members of the Bonita Pointe Association hereinafter described. This license shall extend, however, only to the lake if access exists from the licensee's respective lot. A license to any non-adjointing lot shall not exist by virtue of this Declaration. Owners of lots not adjoining a lake shall have no right or access to a lake.

Declarants have or will during development of the Subdivision and additions convey fee simple title, free of financial encumbrances of the lake and their related easements, dams and spillways or other amenities to the Bonita Pointe Association hereinafter described to the extent located within the Bonita Pointe Subdivision. Such conveyance shall be subject to easements and restrictions of record as well as matters determined appropriate by Declarants for purposes of the Subdivision. Such conveyance shall be deemed to have been accepted by the Bonita Pointe Association and those persons who shall from time to time be members thereof, upon the recording of a deed or deeds conveying the same to the Association.

#### 8. THE BONITA POINTE ASSOCIATION:

A. IN GENERAL: There has been or will be created, under the laws of the State of Illinois, a not-for-profit corporation to be known as the "Bonita Pointe Association" which is sometimes herein referred to as the "Association". Every person who acquires and holds title (legal or equitable) to any residential lot in the Subdivision shall be a member of the Association, except that only one (1) of any number of co-owners of a lot shall be a member; all other co-owners will be Associate Members. The foregoing provision requiring that owners of residential lots within the Subdivision be members of the Association is not intended to apply to those persons who hold an interest in such real estate merely as security for the performance of an obligation to pay money, e.g. mortgagees and land contract vendors. However, if such person should realize upon such persons security and become the real owner of a residential lot within the Subdivision, the person will then be subject to all the requirements and limitations imposed in these Restrictions on owners of residential lots within the Subdivision and on members of the Association, including but not limited to those provisions with respect to the payment of an annual charge.

B. PURPOSES OF THE BONITA POINTE ASSOCIATION: The general purposes of the Association are:

(i) To promote pleasure, social recreation and sports activities for its members, their families and guests and to develop and maintain a recreationally oriented environment in the Subdivision or additions thereto and, including, Bonita Pointe Lake or other lakes, if any, for members eligible to the use thereof;

(ii) To provide a means whereby the Bonita Pointe Lake or other amenities and such other recreational facilities within the Subdivision as may be conveyed to the Association or established by it, may be operated, maintained, repaired and replaced;

(iii) To provide for the operation, maintenance, repair and replacement of street lights, entrance signs, street islands, and other amenities within or about the Subdivision for the general benefit of residents; and,

(iv) To provide a means for the promulgation and enforcement of all regulations necessary to the governing of the use and enjoyment of the Bonita Pointe Lake or other lakes, if any,

and to provide a means to provide and pay for street lights, street island maintenance and other amenities.

C. MEMBERSHIP CLASSES: The Bonita Pointe Association shall have memberships of two (2) classes. They are:

(i) "General" Membership: "General" memberships shall be held by all lot owners within the Subdivision who do not qualify for lake memberships. General members do not have any rights or obligations with respect to the Bonita Pointe Lake or other lakes, if any. General Memberships are primarily established to provide for street lighting, entrance signs, street islands, and other amenities within the Subdivision for the general benefit of residents. Based on the plat of the Subdivision, general memberships relate to Lots One (1) and Two (2).

(ii) "Bonita Point Lake" Memberships: "Bonita Pointe Lake" memberships shall be held by all lot owners within the Subdivision or additions thereto which lots adjoin or lots as designated on the plat include a portion of Bonita Pointe Lake. Bonita Pointe Lake memberships have all of the same rights and obligations as general membership and, additionally, all rights and obligations pertaining to Bonita Pointe Lake established by these Declarations, by the Association, or otherwise. Based on the plat of the Subdivision, Bonita Pointe Lake memberships relate to Lots Three (3), Four (4) and Five (5).

In addition to membership classes, each class shall have Associate Members in accordance with the Articles of Incorporation or Bylaws of Bonita Pointe Association.

The Declarants by additional declarations may extend memberships to Bonita Pointe Association to owners of lots of additions to the Subdivision developed by Declarants. The declarations shall define the rights and obligations of such members

D. POWER OF ASSOCIATION TO LEVY AND COLLECT CHARGES AND IMPOSE LIENS:

(i) The Association shall have all of the powers set forth in its Articles of Incorporation, together with all other powers that belong to it by law, as well as the power to levy an annual charge or special charges (herein "charge" or "charges") against the members of the Association. As among a membership class, the annual charge shall be uniform. Special charges related to individual lots. The charge shall be used only for services, items or matters benefiting the membership class. It is recognized that general services, such as street lighting, apply to the entire Subdivision.

Only one adult person having a legal or equitable ownership in each lot shall be a member of the Association, all other members of the household shall be Associate Members as defined by the Bonita Pointe Association. Charges are imposed irrespective of whether a residence has been constructed on the lot.

No charge shall ever be levied against the Association itself, or any corporation that may be created to acquire title to and operate services to the Subdivision. Further, no charge shall be assessed against the Declarants as to any undeveloped and unsold lot but Declarants may voluntarily pay annual charges. The annual charge for all memberships shall be Seventy-five Dollars (\$75.00), which shall be used for general services, items or matters, such as street lighting or street island maintenance. In addition, Bonita Pointe Lake memberships shall have a further annual charge of Seventy-five Dollars (\$75.00), or a total of One Hundred Fifty Dollars (\$150.00) for each such membership (including both the general and lake charge).

The annual charge for all memberships shall be approved by the Board of Directors of the Association in accordance with the By-laws of the Association consistent with these Declarations. The annual charge applicable to all memberships may exceed the minimum established. However, the maximum additional annual charges applicable to Bonita Pointe Lake memberships must also be approved by a majority of the members in that class.

The rights of members of the Association as such members shall be as set forth in the By-Laws of the Association.

(ii) Every such charge so made shall be paid by the member of the Association within thirty (30) days after billing each year commencing with the year 1995. The Board of Directors of the Association shall fix the amount of the annual charge per member by the first day of February of each year or as soon thereafter as is practicable, and written notice of the charge so fixed shall be sent to each member within thirty (30) days after being established.

(iii) If any charge levied or assessed against any lot subject to these restrictions shall not be paid when due, it shall then ipso facto become a lien, upon the lot or lots owned by the persons owing such charge or charges, and shall remain a lien against said lot or lots until paid in full, together with interest as is hereinafter provided and other charges or costs which might become due as a result of non-payment, or as is hereinafter provided. Such charges as are provided for in these restrictions shall bear interest at the judgment interest rate then established by the State of Illinois until paid in full. If, in the opinion of the Board of Directors of the Association, such charges have remained due and payable for an unreasonably long period of time, they may, on behalf of the Association, institute such procedures, either in law or in equity, either by way of foreclosure of such lien or otherwise, to collect the amount of said charge in any court of competent jurisdiction. The owner of the lot or lots subject to the charge, shall, in addition to the amount of the charge at the time legal action is instituted, be obligated to pay any expenses or costs, including attorneys' fees, incurred by the Association in collecting the same. Every person who shall become the owner of any lot subject to these Restrictions, whether such ownership be legal or equitable, and any person who may acquire any interest in such lot, whether as an owner or otherwise, is hereby notified and by acquisition of such interest, agrees that any such liens or charges which may be extant upon said lot or lots at the time of the acquisition of such interest are valid liens and shall be paid. Every person who shall become an owner of a lot in the Subdivision is hereby notified that by the act of acquiring such title, such person will be conclusively held to have covenanted to pay the Association all charges that the Association shall make pursuant to these Restrictions.

(iv) The Association shall, upon demand, at any time, furnish a certificate in writing signed by an officer of the Association certifying that the assessments on a specified lot have been paid or that certain assessments against said lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**E. SUSPENSION OF PRIVILEGES OF MEMBERSHIP:** Notwithstanding any other provision contained herein, the Board of Directors of the Association shall have the right to suspend the voting rights (if any) and the right to use the facilities of the Association of any member or associate member:

(i) For any period during which any Association charge owed by the member or associate member remains unpaid; and,

(ii) During the period of any continuing violation of the restrictive covenants for the Subdivision, after the existence of the violation shall have been declared by the Board of Directors of the Association; and,

(iii) Because of any violation of the By-Laws or Regulations of the Association.

9. PROVISIONS WITH RESPECT TO LAKE AND LOTS CONTIGUOUS THERETO:

A. IN GENERAL: This paragraph 9 applies to those lots which adjoin a Lake within the Subdivision.

B. WATER, ETC.: The water, in, and the land under, a lake is and will be owned by the Association. Said lake is, or will be generally depicted on the recorded Plat of the Subdivision or any addition. The normal pool water elevation of said Bonita Pointe Lake is at elevation not exceeding 698 feet above mean sea level. The title that will be acquired by the grantee of the said contiguous lots (and by the successors and assigns of such grantee) will and shall extend only to the shorelines of the said lake. No such grantee, nor any of such grantee's successors or assigns shall have any right with respect to any stream that is a tributary to said lake, or with respect to said lake, the land thereunder, the water therein, or its elevation, use of condition, and none of said lots shall have any riparian rights or incidents appurtenant; provided further that title shall not pass by reliction or submergence or changing water elevations. The Declarants, their successors, assigns and licensees, shall have the right, but not the duty, at any time to dredge or otherwise remove any accretion or deposit from any of said lots in order that the shoreline of the lake to which the lot is contiguous may be moved toward, or to, but not inland beyond, the location of said shoreline as it would exist as of the date hereof if the water elevation in said lake were at an elevation one vertical foot above the normal pool water elevation indicated in said Subdivision plats, and title shall pass with such dredging or other removal as by erosion.

C. RESERVATION OF EASEMENT IN DECLARANTS FOR OPERATION OF LAKE: The Declarants reserve unto themselves, their successors, assigns and licensees, such an easement upon, across and through each of said lots contiguous to said lake as is necessary in connection with operating and maintaining said lake and appurtenances. Without limiting the generality of the immediately preceding sentence, it is declared that neither the Declarants nor any successor or assign of the Declarants shall be liable for damages caused by ice, erosion, washing or other action of the water or for any damage caused through the exercise of said easement or that set forth in subparagraph 9(D).

D. RESERVATION OF RIGHT IN DECLARANTS TO CHANGE WATER ELEVATION IN LAKE: The Declarants reserve unto themselves, and their successors, assigns and licensees, the right to raise and lower the elevation of said lake, but neither the Declarants, nor any successor or assign of the Declarants shall have an easement to raise the high water elevation of said lake to an elevation above that indicated on said Subdivision plats or as stated in the Declaration.

10. REMEDIES

A. RIGHT TO PROCEED: The Association or any party to whose benefit these Restrictions inure, including the Declarants, their successors and assigns, and lot owners, may proceed at law or in equity to prevent the occurrence or continuation of any violation of these Restrictions, and shall have the right to obtain a prohibitive or mandatory injunction to

enforce the observance of these Restrictions in addition to and cumulatively with any other remedy provided for herein, as well as the right to recover damages for the breach of these Restrictions. However, neither the Declarants nor the Association shall be liable for damages of any kind to any person for failing either to abide by, enforce or carry out any of these Restrictions.

B. FAILURE TO PROCEED: No delay or failure on the part of an aggrieved party to invoke any available remedy with respect to a violation of any one or more of these Restrictions shall be held to be a waiver by that party (or an estoppel of that party to assert) any right available to him upon the occurrence, recurrence or continuation of such violation or violations of these Restrictions.

11. EFFECT OF OWNERS ACCEPTANCE OF DEED, ETC.:

A. SUBJECT TO RESTRICTIONS: The Owner of any lot subject to these Restrictions, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from the Declarants or a subsequent owner of such lot, shall accept such deed and execute such contract subject to each and every Restriction and agreement herein contained. Further, that by acceptance of such deed or execution of said contract, such persons do acknowledge the rights and powers of the Declarants and of the Association with respect to these Restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, they do covenant and agree and consent to and with the Declarants, the Association and to and with the grantees and subsequent owners of each of the lots affected by these Restrictions to keep, observe, comply with and perform such Restrictions and agreements.

B. LAKE: Each such person also agrees, by such acceptance of a deed or execution of a contract for the purchase of a lot, to assume, as against the Declarants, their successors and assigns, all of the risks and hazards of ownership or occupancy attendant to such lot, including, but not restricted to, its proximity to Bonita Pointe Lake or any other lake.

12. TITLES, ETC.:

The titles preceding the various paragraphs and subparagraphs of the Restrictions are for convenience of reference only, and none of them shall be used as an aid to the construction of any provision of the Restrictions. Whenever and wherever applicable, the singular form of any work shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

13. DURATION:

These Restrictions shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date these Restrictions are recorded, after which time said Restrictions shall be automatically extended for successive periods of five (5) years unless at least two-thirds (2/3) of the then owners of the lots sign and record an instrument revoking, altering or otherwise changing said Restrictions in whole or in part. At any time, at least four-fifths (4/5) of the then owners of the lots may sign and record an instrument revoking, altering or otherwise changing said covenants in whole or in part. With respect to matters directly affecting the Lake including, but not limited to, paragraph 9, not only must the requisite approval of all lot owners be obtained but also of the appropriate owners of lake lots.

In determining the "then owners of the lots," each individual lot shall have a single right. If there are multiple owners of a lot, a majority in interest shall exercise the right of the lot. If

there are two (2) owners having an equal interest, they shall exercise the right jointly, or if they fail to agree, then the first acquiring ownership or the first named in the deed or instrument conveying such lot shall exercise the right. Only lots within this Subdivision (without regard to any addition) shall be considered in determining the required number of then owners of the lots.

The consolidation or redividing of lots even if consistent with these covenants, conditions, easements or restrictions, shall not affect the lots entitled to vote. Further, the owners of those portions of lots consisting of Bonita Pointe Lake (e.g., the Bonita Pointe Lake Association) shall be disregarded.

**14. SEVERABILITY:**

Every one of the Restrictions is hereby declared to be independent of, and severable from, the rest of the Restrictions and of and from every other one of the Restrictions, and of and from every combination of the Restrictions. Therefore, if any of the Restrictions shall be held to be invalid or to be unenforceable, or to lack the quality of running with the land, that holding shall be without effect upon the validity, enforceability or "running" quality of any other one of the Restrictions.