

1803603

DOCUMENT NO.

DECLARATION OF  
MAINTENANCE AGREEMENT  
POLO POINT SUBDIVISION

BROWN COUNTY  
REGISTER OF DEEDS  
CATHY WILLIQUETTE

2001 APR -3 P 3:22

THIS DECLARATION OF MAINTENANCE AGREEMENT (the "Declaration") is hereby made and established as of the 1st day of January 2001, by Polo Points, LLC, a Wisconsin limited liability company (hereinafter the "Developer").

RECITALS

WHEREAS, Developer owns all those lands located in the Town of Hobart, Brown County, Wisconsin, as legally described on Exhibit A attached hereto (the "Land");

WHEREAS, Developer intends to develop the Land as a residential subdivision containing approximately one hundred twenty-eight (128) lots known as "POLO POINT SUBDIVISION" (the "Subdivision") as described on Exhibit A; and

WHEREAS, Developer has entered into a contract for the upkeep and maintenance of the lawns, grounds and common areas of all the Land (except dedicated streets and utilities), for the benefit of the Subdivision as a whole and for the benefit of each Lot Owner; and

WHEREAS, Developer desires to subject all of the Land to the terms and conditions of the maintenance contract it has entered into to provide lawn care, yard maintenance and snow removal for the entire subdivision as currently platted and as additions are platted in the future.

DECLARATION

NOW, THEREFORE, DEVELOPER hereby declares that the real estate described on the attached Exhibit A (except for dedicated streets and utilities), shall be used, held, leased, transferred, sold and conveyed subject to the conditions, restrictions, and terms hereinafter set forth, which shall inure to the benefit of and shall pass with each Lot as covenants running with the land and shall apply to and bind all successors in interest, users and owners.

SERVICES PROVISIONS

1.01 Polo Point, LLC, its successors and assigns, shall arrange, contract for, and provide for lawn care, yard maintenance and snow removal services on a regular basis for every lot in Polo Point Subdivision.

1.01.1 "Lawn Care" shall consist of mowing, trimming, fertilizing, weed control, seasonal upkeep, removal of grass clippings and leaves, all as to the extent determined necessary by the Developer and/or it's assigns. "Lawn Care" shall not include watering of yards.

1.01.2 "Snow Removal" shall consist of plowing of private driveways and shoveling or snowblowing of private walkways for each residence. All services for snow removal shall be done at the frequency determined in the reasonable discretion of the Developer and/or it's assigns as the weather may dictate. Snow Removal shall not include salting or sanding of driveways or walkways.

THIS SPACE RESERVED FOR RECORDING DATA

20-06

NAME AND RETURN ADDRESS  
Schober & Ulatowski, S.C.  
P.O. Box 1780  
Green Bay, WI 54305-1780

**BAY TITLE**

12-46893

- 1.01.3 "Yard Maintenance" shall consist of trimming of hedges and removal of debris, limited weeding of areas around shrubs and plantings and maintenance of wood-chipped and/or rocked areas. Yard Maintenance shall be done on a seasonal basis and at the frequency determined by the Developer and/or it's assigns.

#### SERVICE CHARGES

- 2.01 The Owner(s) of each lot in Polo Point Subdivision shall pay to Polo Point, LLC, its successors or assigns as may be designated in writing to each owner, the sum of Two Hundred Dollars (\$200.00) per calendar month or Two Thousand Four Hundred Dollars (\$2,400.00) per year for the above-described services. Lot owners who own more than one lot as designated on the original and any subsequent plats shall be charged the above-described fee for each lot so owned.
- 2.02 Lot owners may elect to make payments for services on a monthly, quarterly or annual basis. Invoices will be due and payable within 10 days of mailing. All fees which are not paid when due shall bear interest at the lesser of twelve percent (12%) per annum, or the maximum rate as may then be permitted by law, from the date due until the fee is paid in full; shall constitute a lien on the Lot; and shall be collectible and enforceable by the Developer by any means allowable by law.
- 2.03 The obligations for payment of the above-described fee in respect to each lot shall begin upon issuance of a temporary or permanent occupancy permit for the residence on each lot. The monthly fee shall remain the same as stated above until January 1, 2005. Commencing on January 1, 2005, and every two years thereafter, the fee shall be adjusted to an amount equal to the then current fee, multiplied by a fraction, the numerator of which is the Consumer Price Index ("CPI") figure published most recently prior to the date of adjustment, and the denominator of which is the CPI figure published most recently prior to the previous date of adjustment, or in the case of the first adjustment, the CPI figure published most recently prior to January 1, 2001; provided, however, that in no event shall the maintenance fee be less than that which existed for the prior year. As used herein, the terms "Consumer Price Index" shall mean the United States Department of Labor's Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers, All Items, or the successor of that Index, or if no successor then such economic statistic selected by Polo Point, LLC or its successor developer or service provider, as an estimate of the change in the level of consumer prices over time.
- 2.04 Notwithstanding the above paragraph 2.03, the obligations of each lot owner to make payments as set forth herein shall be tolled until thirty (30) days after the Developer provides written notice to the lot owners that the clubhouse being constructed in the subdivision is "substantially completed". The decision as to when substantial completion is achieved shall rest with the Developer and shall be in the Developer's sole discretion.

#### TERM OF AGREEMENT

- 3.01 Unless otherwise amended or mutually agreed to by and between the Developer and the maintenance provider it contracts with, this Agreement, and any amendments thereto, shall be binding until January 1, 2011 upon all lots in Polo Point Subdivision, as currently platted or as hereinafter platted and all owners thereof and any other persons or entities claiming under or through the Developer.

- 3.02 Upon the expiration of said term, This Agreement shall be renewed for a successive five (5) year period and thereafter for successive five (5) year periods, unless there is a recorded instrument executed by the Developer or the owners of at least 75% of all lots encumbered by this Agreement, and their mortgagees, terminating this Agreement. If this Agreement is terminated as provided herein, the lot owners, by and through the Polo Point Homeowner's Association, as established in the Declaration of Covenants and Restrictions dated October 4, 2000 and recorded February 1, 2001 at 3:20 P.M. as Document Number 1792620 shall promptly purchase the clubhouse located within the Subdivision, along with the real property upon which the clubhouse is located, plus all of the clubhouse amenities (hereinafter referred to as the "Clubhouse"), and shall thereafter be responsible for all maintenance associated with this Agreement.
- 3.03 If this Agreement is not renewed or extended and the Homeowner's Association is required to purchase the Clubhouse and assume the responsibilities provided hereunder, said Clubhouse shall be purchased at the fair market value on terms agreed to between the Homeowner's Association and the then owner of the Clubhouse. If no agreement can be reached regarding the purchase price, each party shall name a licensed appraiser, which appraisers shall name a third appraiser, whose appraisal shall be the fair market value for purposes of this Agreement. If no agreement can be reached regarding the terms of the purchase, the matter shall be arbitrated by an arbitrator in Brown County, Wisconsin, as selected by mutual agreement of the parties' respective attorneys.
- 3.04 If this Agreement is not to be renewed or extended, the Developer shall be provided advance written notice of the intent not to renew at least ninety (90) days prior to the expiration of the term hereof. Closing of the sale of the Clubhouse shall be no later than the expiration of the term hereof, unless otherwise agreed to by the parties. If closing does not occur by that date, Developer (and any party acting at the direction of the Developer hereunder) shall be relieved of their obligations to provide the services outlined herein as of the date of the expiration of this Agreement, unless otherwise agreed in writing.

#### MISCELLANEOUS

- 4.01 Severability. The invalidity or unenforceability of any term, condition or provision of this Agreement shall in no way affect the validity or enforceability of any other term, condition or provision of this Agreement, all of which shall remain in full force and effect.
- 4.02 Covenants Running With the Land. All terms, conditions and provisions of this Agreement (and as may be amended) shall constitute covenants running with the land.
- 4.03 Option to Opt Out. Any lot owner may elect to opt out of this Agreement for the limited purpose of refusing to allow the Developer to provide the above-described maintenance services, upon thirty (30) days' written notice to the Developer. However, any such election to refuse maintenance services will not relieve said lot owner from making all payments in accordance with the terms of this Agreement, regardless of said refusal to accept services (the Developer's pricing structure and investment in equipment is predicated on financial participants by all lot owners).
- 4.04 Amendments to Agreement. This Agreement may be amended by recording in the Office of the Register of Deeds for Brown County, Wisconsin, a document to that effect executed by the Developer and by the owners of at least 75% of all lots that are encumbered by this Agreement and their mortgagees, with all signatures duly notarized.

4.05 Enforcement. Upon the failure of any land owner to make payments in accordance with this Agreement, the Developer shall have the right to proceed against said individual land owner(s) legally and said land owner(s) shall be liable for any and all costs or expenses, including actual reasonable attorneys' fees, incurred by the Developer in enforcing any term or condition of this Agreement or other obligations of any land owner or in pursuing any right or remedy or action for the enforcement thereof. Any failure of such enforcement shall not be deemed a waiver of the right to do so or the acquiescence of any violation, subsequent or otherwise.

In addition to legal remedies set forth in this Agreement and all other rights and remedies available at law or in equity, the Developer shall have the right to levy and collect an assessment (which is due upon receipt of notice) against any lot for payment in accordance with this Agreement. Any assessments not paid when due shall bear interest at twelve percent (12%) per annum until paid in full, and such unpaid assessment, together with the interest thereon, shall constitute a continuing lien against the lot for such unpaid assessment is made. Said lien may be foreclosed in the same manner as real estate mortgages under Wisconsin law, provided that such liens shall be subordinate to any purchase money or construction mortgage. The assessment and interest thereon shall further be the personal obligation of the applicable lot owner.

4.06 Limitation of Liability. The Developer will not be liable for damages resulting from any negligent actions by the Developer or its employees during the performance of the above-described maintenance services other than for the cost of repair or replacement of any personal property it may damage. Lot owners shall be responsible for any minor lawn damage caused by snow plowing/removal.

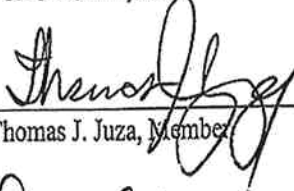
4.07 Waiver of Immunity. In furtherance and not in limitation of any of the terms of this Agreement, the undersigned parties intend that this Agreement shall be and remain at all times until expiration hereof, fully enforceable against all land described above and any person, entity, trust, organization, governmental unit or sovereign nation which may become an owner of any portion of said land. Accordingly, any such person, entity, trust, organization, government unit or sovereign nation which becomes an owner of any portion of said land, whether by virtue of conveyance, operation of law or otherwise, shall be conclusively deemed to have waived any and all defenses to and immunity from enforcement of this Agreement based upon the legal or ethnic status of such land owner, including without limitation sovereign immunity, this Agreement serving as full and adequate public notice of said waiver. Said waiver shall apply to the terms, conditions and encumbrances established in this Agreement.

4.08 Interpretation. This Agreement shall be interpreted and construed in accordance with the laws of the State of Wisconsin.

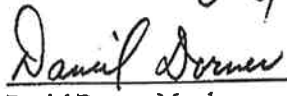
IN WITNESS WHEREOF, this Declaration of Maintenance Agreement is executed by the Developer as of the date first written above.

POLO POINT, LLC

By:

  
Thomas J. Juza, Member

By:

  
Daniel Dorner, Member

