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Daneen Schindler, RECORDER/REGISTRAR
DELAWARE COUNTY IOWA

Prepared by & Return to: Stephanie A. Sailer of Roberts & Eddy, P.C. 2349 Jamestown Ave., Suite 4, Independence, IA 50644, Tel: (319) 334-3704

AGREEMENT

This AGREEMENT, made and entered into this 2nd day of January, 2022 by and between DM Cove, LLC (hereafter "DM Cove"), Lake Pointe Estates Homeowners' Association, Inc. ("Lake Pointe Estates") and Lake Delhi Combined Recreational Facility and Water Quality District (hereafter "District"), collectively referred to as the "Parties".

RECITALS

WHEREAS, District has been created in accordance with Chapter 357E of the Iowa Code and is, therefore, a "Combined Recreational Lake and Water Quality District", incorporated as a "Public Entity" as contemplated by the Iowa Code;;

WHEREAS, DM Cove is a limited liability company organized and existing under the laws of Iowa and is the owner of the following described real estate:

Lot Thirteen (13) of Lake Pointe Estates A Subdivision Of Part Of The NE¼ And Part Of The SE¼ Of Section 30, T88N, R4W Of The 5th Principal Meridian, Delaware County, Iowa, according to the plat recorded in Book 2021, Page 3538 (hereafter "Lot 13");

WHEREAS, Lake Pointe Estates is a nonprofit corporation, organized and existing under the laws of Iowa, which is organized for the purpose of maintaining and administering the common elements of Lake Pointes Estates Subdivision, a residential subdivision in Delaware County, Iowa;

WHEREAS, Lot 13 contains a popular rock structure locally known as "Injun Joe," which juts out over Lake Delhi, approximately twenty feet above the surface. Injun Joe has traditionally been the site of entertainment for various residents and guests, who climb Injun Joe and jump off the top into Lake Delhi;

WHEREAS, DM Cove wishes to donate Lot 13 to District ; and

WHEREAS, District agrees and accepts the donation from DM Cove , with said donation being subject to the terms and conditions of this Agreement.

NOW THEREFORE IT IS HEREBY AGREED by and between the parties as follows:

AGREEMENT

1. **Gift.** Lot 13 will be gifted from DM Cove to District and no consideration will be paid to DM Cove. The property will be transferred by DM Cove to District by Quit Claim Deed, said Deed to be prepared by or on behalf of DM Cove at the expense of DM Cove and Recorded by District at District expense.

2. **Tax Proration.** Real estate taxes due in the Spring of 2022 have been paid in full by DM Cove. Delhi Rec shall pay all subsequent real estate taxes on Lot 13 and there shall be no tax proration.

3. **Easement.** Access to Lot 13 may only be obtained by crossing Lake Delhi. However, the District, and emergency personnel acting on behalf of the District, shall be granted an ingress/egress easement over the East 15 feet of Lot 11 of Lake Pointe Estates. A separate Easement Agreement will be recorded, which provides for said use in the event of a "medical emergency" on District property, and also includes other terms and provisions associated therewith.

4. **Authority.** District, prior to the execution hereof, has approved of the acceptance of this gift and the transfer of the property previously described herein, as is and where is in its' present condition, from DM Cove to the District.

5. **Indemnification.** To the fullest extent permitted by law, District shall defend, indemnify and hold harmless DM Cove and Lake Pointe Estates from and against any and all third party claims, litigation, actions, proceedings, losses, damages, liabilities, obligations, costs and expenses, including reasonable attorneys', investigators' and consulting fees, court costs and litigation expenses, suffered or incurred by DM Cove and/or Lake Pointe Estates, except and unless such costs, claims, and expenses are caused by the negligence of DM Cove and/or Lake Point Estates, arising from injuries to third parties that occurred on the property described herein and/or in any way involving the "Injun Joe" rock abutment.. In no event shall DM Cove or Lake Pointe Estates be liable to District for any damages caused or created by the use of the above-described property, including the rock abutment known as "Injun Joe" by any person or entity, unless said damages are caused or created by the negligence of DM Cove and/or Lake Point Estates.

6. **Assumption of Risks.** By accepting and receiving the donation of Lot 13, which includes "Injun Joe", same being recognized as a prominent Lake Delhi feature or destination for both those living within District and the general public visiting Lake Delhi, District acknowledges its' understanding and appreciation of the inherent risks of injury associated with the use of the property described herein and the feature located thereon known as "Injun Joe". By the execution of this Agreement District acknowledges that it is knowingly accepting the property with those risks in mind and is, therefore, assuming all such risks.

7. **Incorporation of Recitals.** The parties hereto acknowledge that the above-stated recitals are true and correct and are hereby incorporated by reference. The parties hereto have entered into this Agreement in reliance upon the recitals set forth hereinabove together with the remaining covenants, terms and conditions of this Agreement.

8. **Severability.** District further expressly agrees that the foregoing agreement is intended to be as broad and inclusive as is permitted by the law of the State of Iowa and that if any portion thereof is held invalid, it is agreed that the balance shall, notwithstanding, continue in full legal force and effect.

9. **Legal Representation.** By signing this Agreement, the parties hereby acknowledge that they have each retained legal counsel to review this agreement in advance of the execution hereof.

10. **Governing Law.** This Agreement is made and entered into within and will be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Iowa, without regard to principles of conflicts of laws. Any dispute arising out of or related to this Agreement shall be brought in the Iowa District Court for Delaware County.

11. **Binding Effect.** The provisions of this Agreement are intended to bind and inure to the benefit of and be enforceable by each party hereto, and each of their respective successors, assigns, and heirs.

12. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Except as otherwise expressly provided in this Agreement, no term or provision of this Agreement may be changed, waived, amended or terminated except by written Agreement signed by each of the parties hereto.

13. **Modification.** The terms and provisions of this Agreement shall not merge with, or be extinguished or otherwise affected by, any subsequent conveyance or instrument between the parties unless the instrument specifically so states and is signed by all parties.

14. **No Third Party Beneficiaries.** The terms of this Agreement are intended to be and shall be for the sole benefit of the parties. No incidental benefits to any person not a party to this Agreement shall give rise to any claims that they are a third party beneficiary of this Agreement nor shall any person not a party to this Agreement be entitled to enforce any rights established pursuant to the terms of this Agreement.

15. **Headings.** The headings of the various Sections of this Agreement are for the convenience of the parties and shall not be used in construing or interpreting this Agreement or any part thereof.

16. **Gender and Number:** Words and phrases herein shall be construed as in the singular or plural and as masculine, feminine or neuter gender, according to the context.

17. **Multiple Copies; Electronic Signatures.** The parties may execute multiple copies of this Agreement, each of which shall be an original for all purposes but all of which taken together shall constitute one and the same Agreement. Further, any signature on this Agreement, any amendment hereto, or any notice delivered pursuant to the terms hereof, by any party by facsimile or other electronic means shall be deemed effective as the original signature of such party for all purposes.

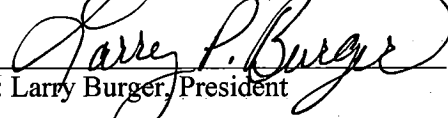
18. **Parties' Execution.** The persons signing this Agreement on behalf of any party hereto represents and warrants to the other parties that their signatures are all that is required to legally bind said party with respect to the entire interest in the Property.

DM COVE, LLC


Chad A. Mormann, Manager


Jeff Domeyer, Manager

**COMBINED LAKE DELHI
RECREATIONAL FACILITY AND
WATER QUALITY DISTRICT**

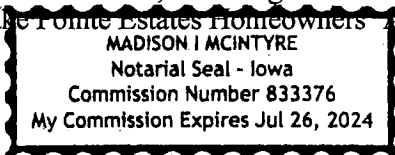

By: Larry Burger, President

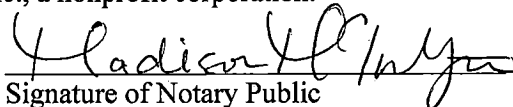
**LAKE POINTE ESTATES
HOMEOWNERS' ASSOCIATION, INC.**


By: Chad A. Mormann, President

STATE OF IOWA, COUNTY OF Buchanan

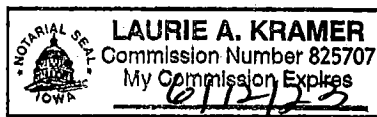
This record was acknowledged before me on Feb 2, 2022, 2022 by Chad A. Mormann, as Manager of DM Cove, LLC, an Iowa limited liability company, and as President of Lake Pointe Estates Homeowners' Association, Inc., a nonprofit corporation.




Signature of Notary Public

STATE OF IOWA, COUNTY OF Delaware

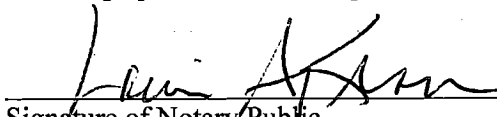
This record was acknowledged before me on February 1st, 2022 by Jeff Domeyer, as Manager of DM Cove, LLC, an Iowa limited liability company.




Signature of Notary Public

STATE OF IOWA, COUNTY OF Delaware

This record was acknowledged before me on January 20, 2022 by Larry Burger, as President of The Combined Lake Delhi Recreational Facility and Water Quality District, an organization existing under and consistent with the provisions and requirements of Iowa Code Chapter 357E.


Signature of Notary Public

