

STATE OF INDIANA
OFFICE OF THE SECRETARY OF STATE

To Whom These Presents Come, Greeting

CERTIFICATE OF INCORPORATION

BAY POINTE CO-OWNERS' ASSOCIATION, INC.

I, EDWIN J SIMCOX, Secretary of State of Indiana, hereby certify that Articles of Incorporation of the above not-for-profit corporation, in the form prescribed by this Office, prepared and signed in duplicate by the Incorporator(s) and acknowledged and verified by the same before a Notary Public, have been presented to me at this office accompanied by the fees prescribed by law that I have found such Articles conform to law, that I have endorsed my approval upon the duplicate copies of such Articles that all fees have been paid as required by law, that one copy of such Articles has been filed in this office and that the remaining copy(ies) of such Articles bearing the endorsement of my approval and filing has (have) been returned by me to the incorporator(s) or his (their) representatives all as prescribed by the Indiana Not-For-Profit Corporation Act of 1971

NOW, THEREFORE, I hereby issue to such Corporation this Certificate of Incorporation, and further certify that its corporate existence has begun

In Witness Whereof, I have hereunto set my hand and affixed
the seal of the State of Indiana, at the City of Indianapolis this

5th day of

NOVEMBER 19 86

Edwin J. Simcox
EDWIN J SIMCOX, Secretary of State

By Laurie Fairmanish
Deputy



FILED
IND SECRETARY OF STATE
NOV 5 1986

ARTICLES OF INCORPORATION

BAY POINTE CO-OWNERS' ASSOCIATION, INC. NOV 5 1986

The undersigned incorporator, desiring to form a corporation (hereinafter referred to as the "Corporation") pursuant to the provisions of the Indiana Not-For-Profit Corporation Act of 1971, as amended (hereinafter referred to as the "Act") executes the following Articles of Incorporation.

ARTICLE I

Name

The name of the Corporation is Bay Pointe Co-Owners' Association, Inc.

ARTICLE II

Purposes and Powers

Section 2.1. Purposes. The purposes for which the Corporation is formed are:

(a) For the acquisition, construction, management, maintenance and care of "association property", as defined in Section 528(c) of the Internal Revenue Code of 1954, as amended, ("Internal Revenue Code"), which association property includes, but is not limited to, the Common Areas within that certain tract of property described in the Declaration of Bay Pointe Horizontal Property Regime, recorded October 23, 1986 at Misc. Rec. 171, pps. 59-98 in the office of the Recorder of Monroe County, Indiana, as amended (the "Declaration").

(b) Solely in furtherance of the aforesaid purposes, to transact any and all lawful business for which corporations may be incorporated under the Act, provided such business is not inconsistent with the Corporation being organized and operated exclusively for charitable purposes.

Section 2.2. Non-Profit Purposes.

(a) The Corporation is organized and operated exclusively for the purpose of being a non-profit "homeowners association", as defined in Section 528(c) of the Internal Revenue Code, or corresponding provisions of any subsequent Federal tax laws, and its activities shall be conducted in such a manner that no part of its net earnings shall inure to the benefit of any member, director, or officer or other private person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Section 2.1.

(b) Notwithstanding any other provision of these Articles of Incorporation, the Corporation shall not carry on any activities not permitted to be carried on by a corporation which qualifies for the exemption from Federal income tax with respect to its exempt function income under Section 528(c) of the Internal Revenue Code, or corresponding provisions of any subsequent Federal tax laws.

Section 2.3. Powers. Subject to any limitation or restriction imposed by the Act, any other law, or any other provision of these Articles of Incorporation, the Corporation shall have the power:

(a) To exercise all of the powers and privileges and to perform all of the duties and obligations of the Corporation as set forth in the Declaration, as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;

(b) To fix, levy, collect and enforce payment of, by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incidental to the conduct of the business of the Corporation, including all licenses, taxes or governmental charges levied or imposed against the property of the Corporation;

(c) To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for the public use or otherwise dispose of real or personal property which is held in title by this Corporation in connection with the affairs of the Corporation.

(d) To borrow money, and with the assent of two-thirds (2/3) of the members, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property for money borrowed or debts incurred;

(e) To dedicate, sell or transfer any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument has been signed by two-thirds (2/3) of the members, agreeing to such dedication, sale or transfer, except as otherwise provided in the Declaration; and

(f) To have, exercise and enjoy in furtherance of the purposes hereinbefore set forth any and all powers, rights and privileges granted to a corporation by the Not-For-Profit Corporation Law of the State of Indiana, as now existing or hereafter amended, and by the common law.

Section 2.4. Limitations on Powers.

(a) The Corporation shall not issue capital stock.

(b) The Corporation must receive sixty percent (60%) or more of its gross income from membership dues, fees or assessments from the owners of residential units.

(c) The Corporation must make ninety percent (90%) or more of its expenditures for the acquisition, construction, management, maintenance, and care of association property.

(d) Upon dissolution of the Corporation, no member, director, officer, or any private individual will be entitled to share in the distribution of the Corporation's assets. Upon dissolution, the board of directors shall, after paying or making provision for the payment of all the liabilities of the Corporation, dispose of all the assets of the Corporation exclusively

for the purposes of the Corporation as the board of directors shall determine. Any such assets not so disposed of shall be disposed of by the Judge of the Circuit Court of Monroe County, Indiana, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

ARTICLE III

Term of Existence

The Corporation shall have perpetual existence.

ARTICLE IV

Resident Agent and Principal Office

Section 4.1. Resident Agent. The name and post office address of the resident agent of the corporation are Max R. Kendall, Quality Village Builders, Inc., 8910 Purdue Road, Suite 150, Indianapolis, Indiana 46268.

Section 4.2. Principal Office. The post office address of the principal office of the Corporation is 8910 Purdue Road, Suite 150, Indianapolis, Indiana 46268.

ARTICLE V

Membership

Section 5.1. Classes. The Corporation shall have one class of voting members and no classes of non-voting members. Subject to such additional qualifications and conditions as may be prescribed from time to time in the By-laws of the Corporation, membership is limited to those persons who are the record owners

of a fee simple title to a "Dwelling Unit", as the same is defined in the Declaration.

Section 5.2. Rights, Preferences, Limitations and Restrictions of Classes. No rights, preferences, limitations restrictions on the classes of membership shall exist other than those specified herein, in the By-laws of the Corporation or by law.

Section 5.3. Voting Rights of Members. Each member in good standing shall be entitled to voting rights as follows:

(a) Number of Votes. To facilitate the orderly conduct of the meeting, each member shall be entitled to cast his or her Percentage Vote, as defined in the Declaration on each matter coming before the meeting. The total of Percentage Votes for or against any matter shall then be divided either by 100 (being the total of all Percentage Votes in the Regime) to determine the respective proportions of members who support or oppose such matter, or by the total Percentage Votes of Owners which are present or represented at such meeting to determine the respective proportions of members present or represented at such meeting who support or oppose such matter.

(b) Multiple Owners. When the Owner of a Dwelling Unit constitutes more than one person or entity, or is a partnership, there shall be only one voting representative entitled to cast the Percentage Vote allocable to that Dwelling Unit. At the time of acquisition of title to a Dwelling Unit by a multiple Owner or a partnership, those persons constituting such Owner or the partners shall file with the Secretary of the Corporation an

irrevocable proxy appointing one of such persons or partners as the voting representative for such Dwelling Unit which shall remain in effect until such appointed representative relinquishes such appointment in writing, becomes incompetent, dies, or such appointment is otherwise rescinded by order of a court of competent jurisdiction. Such appointed voting representative may grant a proxy to another to vote in his place at a particular meeting or meetings pursuant to paragraph (d) of this Section 5.3, which shall constitute relinquishment of his right to act as voting representative for the Dwelling Unit at such meeting or meetings.

(c) Voting by Corporation or Trust. Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustees may cast the Percentage Vote on behalf of the trust, and the agent or other representative of the corporation duly empowered by the board of directors of such corporation shall cast the vote to which the corporation is entitled.

(d) Proxy. A member may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the member shall duly designate his attorney-in-fact in writing, delivered to the Corporation prior to the commencement of the meeting.

(e) Quorum. Except where otherwise expressly provided in the Declaration, these Articles, the By-laws, or the Act, the presence of members or their duly authorized representatives holding a majority of the total Percentage Vote shall constitute

a quorum at all meetings. The terms "majority of members" and "majority of the vote", as used in these Articles, shall mean, unless otherwise expressly indicated, more than fifty percent (50%) of the total Percentage Vote as determined by the applicable provisions set forth in the Declaration, and shall not mean a majority of the persons or votes present or represented at such meeting.

(f) The term "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Dwelling Unit. Persons or entities owning a single Dwelling Unit as tenants in common, joint tenants, or tenants by the entities shall be deemed one Owner.

ARTICLE VI

Board of Directors

Section 6.1. Number. The initial board of directors shall consist of three (3) directors. The exact number of directors shall be specified from time to time in the By-laws of the Corporation. The minimum number of directors so specified shall be three (3) and the maximum number shall be seven (7). Whenever the By-laws do not specify the number of directors, the number shall be three (3).

Section 6.2. Qualifications. Each director shall have such qualifications as may be specified from time to time in the By-laws of the Corporation or required by law.

Section 6.3. Initial Board of Directors. The names and addresses of the initial board of directors, also known as board of managers, of the Corporation are:

<u>Name</u>	<u>Addresses</u>
Max R. Kendall	8910 Purdue Road Suite 150 Indianapolis, Indiana 46268
Gerald K. Pedigo	9001 Wesleyan Road Suite 115 Indianapolis, Indiana 46268
Phillip K. Hasiak	Merchants Plaza, East Tower Suite 1135 101 West Washington Street Indianapolis, Indiana 46204

ARTICLE VII

Name and Address of Incorporator

The name and address of the incorporator of the Corporation are:

<u>Name</u>	<u>Addresses</u>
Phillip J. Stoffregen	One American Square Box 82001 Indianapolis, Indiana 46282

ARTICLE VIII

Statement of Property

Upon its incorporation, the Corporation is assuming control of real property designated as Bay Pointe Horizontal Property Regime and certain cash and other assets in connection therewith, valued at more than \$1,000.00.

ARTICLE IX

Provisions for Regulation and Conduct Of The Affairs Of The Corporation

Section 9.1 Directors; Amendment of Articles. Other provisions, consistent with the laws of the State of Indiana, for the regulation and conduct of the affairs of the Corporation, and creating, defining, limiting or regulating the powers of the Corporation, the directors or the members are as follows:

(a) The affairs of the Corporation shall be managed initially by the board of three (3) directors set forth in Article VI, Section 6.3, above, who shall serve until the date on which control of the Association is turned over to the members, as provided in the Declaration, at which time the members shall elect one director for a term of one year, one director for a term of two years and one director for a term of three years; and at each annual meeting thereafter the members shall elect a director, for a term of three years to replace the outgoing director. All additional directors shall serve in the same manner.

(b) Amendment of these Articles shall require the assent of not less than sixty-six and two-thirds percent (66 2/3%) of all Owners.

Section 9.2. Place of Meetings. Meetings of the members and of the board of directors of the Corporation shall be held at such places, either within or without the State of Indiana, as shall be specified in the respective calls and notices or waivers

of notice of such meetings given in accordance with the By-laws of the Corporation.

Section 9.3. Indemnification.

(a) The Corporation shall indemnify any person as of right who is or was a director, officer, or employee of this Corporation, or is or was serving as a director, officer, or employee of another corporation, partnership, or other enterprise at the request of the Corporation, against expenses (including attorneys' fees), judgments, fines, penalties, and amounts paid in settlement reasonably incurred by such person, to the fullest extent now or hereafter permitted by law, in connection with or resulting from any claim, action, suit, or proceeding (whether actual or threatened, civil, criminal, administrative or investigative, or in connection with an appeal relating thereto), in which such person may be involved as a party or otherwise by reason of being or having been a director, officer, or employee of the Corporation or of such other organization; provided, such person acted in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation and, with respect to any criminal action or proceeding, in a manner which he or she had no reasonable cause to believe was unlawful. The termination of any claim, action, suit, or proceeding by judgment, order, settlement (whether with or without court approval), conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith

and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action, suit, or proceeding, in a manner which he or she had no reasonable cause to believe was unlawful.

(b) Any director, officer, or employee of the Corporation who has been successful as a party on the merits or otherwise in the defense of any claim, action, suit, or proceedings referred to in the first sentence of Section 9.3(a) shall be indemnified as of right against expenses (including attorneys' fees) reasonably incurred by him or her in connection therewith (except to the extent covered by insurance).

(c) Except as provided in Section 9.3(b) above, any indemnification under Section 9.3(a) shall be made by the Corporation only upon a determination that indemnification of the particular director, officer, or employee is proper in the circumstances because such person has met the applicable standards of conduct set forth in Section 9.3(a). Such determination shall be made (i) by the board of directors of the Corporation by a majority vote of a quorum consisting of members of the board of directors who were not parties to such claim, action, suit, or proceeding, or (ii) if such a quorum is not obtainable or if so directed by a majority vote of a quorum consisting of members of the board of directors who were not parties to such claim, action, suit, or proceeding, by independent legal counsel (who may be regular counsel of the Corporation) in a written opinion, or (iii) by vote of the members of the Corporation.

(d) The indemnification provided by this Section 9.3 shall not be deemed exclusive of any other rights to which a director, officer, or employee may be entitled under any by-law, resolution, agreement, vote of the members, or otherwise, and shall continue as to a person who has ceased to be a director, officer, or employee of the Corporation, and shall inure to the benefit of the heirs, executors, and administrators of any such person. The indemnification provided by this Section 9.3 shall be applicable to claims, actions, suits, or proceedings made or commenced after the adoption hereof, arising from acts or omissions to act occurring whether before or after the adoption hereof.

(e) This Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Corporation, or who is or was serving at the request of the Corporation as a director, officer, partner, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Section 9.3, together with expenses actually and reasonably incurred by such person in connection with the defense thereof; provided that when and to the extent that the Corporation has purchased and maintained such insurance, it shall have

no duty under this Section 9.3 to indemnify any such person to the extent such liability is covered by such insurance.

Section 9.4. Compensation of Employees. In order to carry out the purposes and activities of the Corporation, such individuals as are deemed necessary may be employed, and each such employee may be paid such compensation for services actually rendered in the course of such employment as may be fixed in the manner provided by the board of directors of the Corporation.

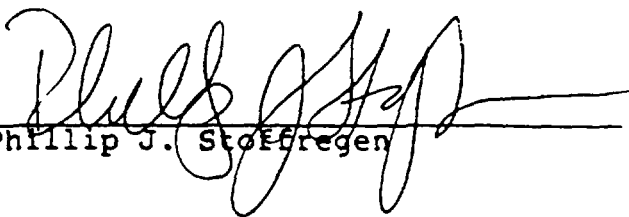
Section 9.5. By-Laws. The By-laws of the Corporation may be amended as set forth in the By-laws. Said By-laws may contain other provisions consistent with the laws of the State of Indiana, for the regulation and management of the affairs of the Corporation.

Section 9.6. Powers of the Board of Directors. Subject to any limitation or restriction imposed by law or by these Articles of Incorporation, the board of directors of the Corporation is hereby authorized to exercise, in furtherance of the purposes of the Corporation, all the powers of the Corporation without authorization or approval of the members of the Corporation.

IN WITNESS WHEREOF, the undersigned incorporator executes these Articles of Incorporation and verifies subject to penalties of perjury that the facts contained herein are true, representing beforehand to the Secretary of State of the State of Indiana and all persons whom it may concern that a membership list or lists of the above-named Corporation for which a Certificate of Incorporation is hereby applied have heretofore been opened in

accordance with the Act, and that at least one (1) person has signed such membership list.

Dated this 4th day of November, 1986.


Phillip J. Stoffregen

This instrument was prepared by Phillip J. Stoffregen, ICE MILLER DONADIO & RYAN, One American Square, Box 82001, Indianapolis, Indiana 46282.

191581

DECLARATION
OF
BAY POINTE
HORIZONTAL PROPERTY REGIME

QUALITY VILLAGE BUILDERS, INC

"DECLARANT"

INCLUDING THE
CODE OF BY-LAWS OF
THE BAY POINTE CO-OWNERS ASSOCIATION, INC

RECORDED
A.M. _____ P.M. 3:00
✓
OCT 23 1986
[Signature]
✓ **RECORDER MONROE CO IND** ✓

DECLARATION OF BAY POINTE
HORIZONTAL PROPERTY REGIME

THIS DECLARATION OF BAY POINTE HORIZONTAL PROPERTY REGIME ("Declaration"), made this 22 day of October, 1986, by QUALITY VILLAGE BUILDERS, INC. an Indiana corporation, ("Declarant"),

WITNESSETH

WHEREAS, Declarant is the sole owner of the fee simple title to certain real estate, located in Monroe County, Indiana, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (hereinafter called the "Real Estate"), and,

WHEREAS, Declarant is also the sole owner of the fee simple title to certain other real estate adjacent to the Real Estate, more particularly described in Exhibit B attached hereto and incorporated herein by this reference (hereinafter called the "Adjacent Real Estate"), all or part of which Declarant anticipates may be added to the Real Estate by portions to be designated by Developer from time to time (the Real Estate and Adjacent Real Estate together to be called the "Tract"); and,

WHEREAS, Declarant, by execution of this Declaration, creates a Horizontal Property Regime ("Regime") upon the Real Estate, subject to the provisions of the Horizontal Property Act of the State of Indiana ("Act") and the terms and conditions of this Declaration, and,

WHEREAS, Declarant intends that as the portions of the Adjacent Real Estate are from time to time developed, they will be added to the Regime by amendment to this Declaration, so that the Regime created hereby is to be "expandable", as that term is used in the Act,

NOW, THEREFORE, Declarant hereby makes this Declaration and declares that the Real Estate shall be a "Horizontal Property Regime" as provided in the Act and that said Horizontal Property Regime shall be expandable to include all or part of the Adjacent Real Estate, as the same may be annexed from time to time subject to and in accordance with the following terms and conditions

Section 1 Definitions Unless the context clearly requires otherwise, the following terms whenever used in this Declaration shall have the following assigned meanings

- (a) "Act" means the Horizontal Property Act of the State of Indiana, Acts 1963, Chapter 349, Sections 1 through 31, as amended
- (b) "Additional Sections" means the portions of the Adjacent Real Estate which may from time to time be annexed to and included within "the Regime" as provided in Section 15
- (c) "Amendment" means any amendment to this Declaration by which all or any portion of the Adjacent Real Estate is added to the Regime
- (d) "Association" means the incorporated association of Co-Owners of the Regime, more particularly described in Section 8

- (e) "Board of Directors" means the governing body of the Association elected by the Co-Owners in accordance with the By-Laws, and shall be synonymous with the term "Board of Directors" as used in the Act
- (f) "Building" shall mean a single structure which contains more than one Dwelling Unit
- (g) "By-Laws" means the Code of By-Laws of Bay Pointe Co-Owners Association, Inc., an Indiana not-for-profit corporation, providing for the administration and management of the Association, a true copy of which is attached to this Declaration and incorporated herein by reference.
- (h) "Common Areas" means the General Common Areas as defined in Section 4 of this Declaration and the Limited Areas as defined by Section 5 of this Declaration.
- (i) "Common Expenses" means expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Areas and all other costs and expenses incurred by the Association for the benefit of the Common Areas or for the common benefit of all Owners, provided, however, that Common Expenses shall not include any costs of initial construction of any Building or other Property or improvements on any portion of the Tract, nor any costs or repairs covered by any warranty of Declarant as builder of the Buildings and other Property within the Regime, nor to any costs or repairs arising out of construction or other activities on any portion of the Adjacent Real Estate prior to its addition to the Regime, including but not limited to road damage and debris caused by construction traffic, linkage to any utility lines or mains within the Regime, and damage to or deterioration of grass, trees, fences, or other Property due to construction or the state of areas under development
- (j) "Co-Owners" means all of the Owners of all the Dwelling Units in the Regime.
- (k) "Declarant" means Quality Village Builders, Inc., and any successor or assignee of its interest in all or any part of the Tract or in this Declaration under any instrument or instruments which expressly state that the successor or assignee thereunder shall become the Declarant for purposes of this Declaration
- (l) "Dwelling Unit" means any individual residential unit within the Regime which is to be transferred to an Owner for exclusive occupancy by said Owner or its successors or assigns, each individual unit being more particularly described and identified on the Plans and in Sections 2 and 3 of this Declaration.
- (m) "Formula" means the method set forth in paragraph 15 B of this Declaration for computing the Percentage Interest applicable to each Dwelling Unit, including the Percentage Interest after any Additional Section is added by Amendment to this Declaration
- (n) "General Common Areas" means those Common Areas the use and enjoyment of which is not limited to certain

- (o) "Limited Areas" means those Common Areas, the use and enjoyment of which is limited to a certain Dwelling Unit or Units, as defined in Section 5 of this Declaration
- (p) "Managing Agent" means any person or entity to which the management responsibilities of the Association are delegated under Section 13 of this Declaration.
- (q) "Mortgagee" means the holder, insurer, or guarantor of any mortgage on any Dwelling Unit.
- (r) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, which owns the fee simple title to a Dwelling Unit. Persons or entities owning a single Dwelling Unit as tenants in common, joint tenants, tenants by the entirety, or any form of joint or divided ownership, shall be deemed one Owner for purposes of this Declaration.
- (s) "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas and Limited Areas appertaining to each Dwelling Unit, as determined in accordance with Sections 6 and 15 of this Declaration.
- (t) "Percentage Vote" means that percentage of the total vote accruing to all of the Dwelling Units which is applicable to each particular Dwelling Unit and exercisable by the Owner thereof, as described in Sections 7 and 15 of this Declaration and in the By-Laws
- (u) "Plans" means the floor and building plans of the Buildings and Dwelling Units on the Real Estate and the site plan, survey and elevation plan of the Real Estate and Buildings, duly certified by a registered architect or licensed professional engineer, and any such floor and building plans, site plans, surveys, and elevation plans which shall be prepared, verified and filed with any Amendments and which pertain to portions of the Adjacent Real Estate annexed to and made a part of "the Regime" by such Amendments.
- (v) "Property" means the Real Estate and appurtenant easements, the Dwelling Units, the Buildings, and all other improvements of every kind and nature whatsoever now or hereafter located upon the Real Estate or upon any Additional Sections after annexation to the Regime and used in connection with the operation, use and enjoyment of the Regime.
- (w) "Regime" means the Horizontal Property Regime created by this Declaration, including any subsequent Amendments thereto.
- (x) "Tract" shall mean the Real Estate and Adjacent Real Estate

Section 2 Description of Dwelling Units The Real Estate contains Eleven (11) Dwelling Units, as shown on the Plans recorded at the time of recording of this Declaration, as further described in Section 32 hereof. Said Dwelling Units are identified and referred to in the Plans and in this Declaration as Dwelling Units numbered 1 through 11, inclusive.

the Plans filed with each Amendment. The legal description for each Dwelling Unit shall consist of the numeric designation of the particular Dwelling Unit and reference to this Declaration and any relevant Amendments then of record. Each Dwelling Unit shall consist of all space within the boundaries thereof (as hereinafter described) and all fixtures, facilities, utilities, equipment, appliances, and structural components within said boundaries which are designed or intended to be solely and exclusively for the enjoyment, use and benefit of the Dwelling Unit. Not included in any Dwelling Unit are those fixtures, facilities, utilities, equipment, appliances, and structural components designed or intended for the use, benefit, support, safety or enjoyment of more than one Dwelling Unit, or which may be necessary for the same, or which are specifically defined or described herein as General Common Areas or Limited Areas, or which are normally intended for common use, provided, however, that all fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Dwelling Unit shall constitute a part of such Dwelling Unit, even if the same are located wholly or partly outside the boundaries of such Dwelling Unit.

Section 3. Boundaries. The boundaries of each Dwelling Unit shall be as shown on the Plans. The vertical boundaries shall run from the interior, unfinished surfaces of the lowermost floors to the interior, unfinished surfaces of the uppermost ceilings, and the horizontal boundaries shall be the interior, unfinished drywall surfaces of the common walls and exterior walls and the unfinished interior surfaces of the doors and windows of each Dwelling Unit, except that all glass, screens and air conditioning units shall be deemed a part of the Dwelling Unit. In the event that any horizontal or vertical boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or roof of the Dwelling Unit because of inexactness of construction, settling after construction, or for any other reasons, the boundary lines of each Dwelling Unit shall be deemed to be and treated for purposes of occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the Owner of each Dwelling Unit in and to such space lying outside of the boundary lines of the Dwelling Unit as indicated on the Plans, but within the walls, floors, and ceilings of the Dwelling Unit as the same may actually exist.

Section 4. General Common Areas. General Common Areas shall include the following, except to the extent otherwise specifically designated in Section 2, 3, or 5 as being within a Dwelling Unit or as Limited Areas:

- (a) the yards, gardens, open spaces, fences, landscaping, and woodland areas;
- (b) sidewalks, streets, driveways, and open parking lots
- (c) recreational areas and facilities, if and to the extent at any time made a part of the Regime,
- (d) exterior lighting fixtures and electrical service except where separately metered to a particular Dwelling Unit;
- (e) electrical, gas, water, sanitary sewer, telephone, and cable television lines, mains, pipes, ducts, conduits, wiring and insulation, to the extent not owned by any public or private utility;
- (f) interiors of all structural walls and floors, including all exterior walls and attic space walls between

horizontally adjacent Dwelling Units, and floors between vertically adjacent Dwelling Units,

- (g) foundations, roofs, exterior wall surfaces of Buildings, and all other structural elements and components of the Buildings;
- (h) all other structures, areas, and facilities not expressly defined as Limited Areas in Section 5 or expressly included within the Dwelling Units by Sections 2 or 3 of this Declaration

The Owners may, in their discretion and through proper Association proceedings, elect to construct a tennis court, swimming pool and/or similar related facilities on a portion of the Common Area. Such tennis court, swimming pool, pool house and/or similar related facilities shall, if and when constructed, constitute Common Areas and Property and the cost and expense of maintaining and operating such facilities shall be treated as a Common Expense hereunder.

Section 5 Limited Areas Limited Areas shall consist of the following

- (a) Storage Areas Storage areas, if any, shall be limited to the exclusive use of a particular Dwelling Unit as designated on the Plans. The exclusive use of such storage areas shall pass with title to the Dwelling Unit for which such Area is designated, even though not expressly mentioned in the document passing title. The storage areas and use thereof shall be subject to such rules and regulations as may be deemed appropriate and be adopted by the Board of Directors. An Owner may grant a license to any other Owner to use all or part of his storage area, provided such license shall expire when the Owner granting the license ceases to be an Owner of the Dwelling Unit for which the storage area is designated. Any such license agreement shall be in writing and an executed copy thereof shall be furnished to the Board of Directors. The licensee shall be bound by and subject to all the obligations of the Owner with respect to such storage area, but the Owner granting such license shall not be relieved thereby from any of his obligations regarding such storage area
- (b) Entranceways. The entranceways through which access to a Dwelling Unit is obtained are limited to the use of the Dwelling Unit or Dwelling Units served by such entranceway.
- (c) Patios and Balconies. The patios, balconies, porches, courtyards and decorative walls and fences are limited to the use of the Dwelling Unit or Dwelling Units to which they are appurtenant
- (d) Driveways and Parking Areas The driveways, walkways, and similar areas used for access to particular individual Dwelling Units are limited to the use of the Dwelling Units so served. Each Dwelling Unit shall have the exclusive right to use the parking area located in the driveway area immediately adjacent to that Dwelling Unit, as shown on the Plans.

Section 6. Ownership of Common Area and Percentage Interest In connection with and as an inseparable part of the ownership of each Dwelling Unit, each Owner thereof shall have an undivided interest in the Common Areas as tenant in common with all other Owners, such interest to be equal to the Percentage Interest applicable to the Dwelling Unit.

Interest in the Common Areas applicable to each Dwelling Unit shall be determined in accordance with the Formula set forth in Section 15 of this Declaration. The Percentage Interests at the time of recording of this Declaration are as set forth on Exhibit C attached hereto and made a part hereof. If any Additional Sections are annexed, as permitted and contemplated by paragraph 15 of this Declaration, then upon execution and recordation of the applicable Amendment, the Percentage Interest of each Dwelling Unit which is a part of the Regime prior to such annexation shall be recomputed in accordance with the Formula. Such recomputation will have the effect of reducing the Percentage Interests in those Common Areas which are a part of the Regime prior to such Amendment, so as to allocate Percentage Interests therein to the Dwelling Units added to the Regime by the Amendment. At the same time, such recomputation shall create Percentage Interests, in favor of all Dwelling Units in the Regime immediately following such annexation, in the Common Areas within such Additional Section being annexed. The overall resulting Percentage Interests shall be determined according to the Formula and designated in the applicable Amendment. Except as provided in Section 15, in any calculation or determination of the Percentage Interest, the figure obtained shall be rounded to the nearest one-thousandth of a percent and shall be so presented for all purposes of conveyance and for all purposes of this Declaration.

Section 7 Membership in Association and Percentage Vote

In connection with and as an inseparable part of the ownership of each Dwelling Unit, each Owner shall be a member of the Association and shall have a Percentage Vote, which he or she shall be entitled to cast at each meeting of the Association on each matter on which the Co-owners may vote under the terms of this Declaration, the Articles of Incorporation of the Association, or the By-Laws. The Percentage Vote allocable to each Dwelling Unit for all matters upon which the Co-Owners are entitled to vote shall be equal to the Percentage Interest appertaining to each Dwelling Unit as determined by Sections 6 and 15, taking into account any adjustments as a result of any Amendments. Unless otherwise stated in the Act, the By-Laws, or this Declaration, matters to be undertaken or performed by the Association shall be so undertaken or performed only upon the approval thereof by a majority of the Percentage Vote represented at the meeting of the Association at which such matter is considered (provided a quorum is present). To determine whether a majority or any specific percentage of the vote required by this Declaration has approved any matter, the number of Owners whose votes have been cast in favor of such matter shall be tallied. For purposes of this Declaration and the Act, a majority of the Percentage Vote or of the Co-Owners shall not exist unless such sum, when divided by the total number of Dwelling Units then in the Regime, exceeds fifty percent (50%), a two-thirds (2/3) majority of the Percentage Vote of the Co-Owners shall not exist unless such sum, when divided by the total number of Dwelling Units then in the Regime, exceeds the decimal equivalent of two-thirds (2/3), and a majority of the Percentage Vote present or represented at such meeting shall not exist unless such sum, when divided by the number of Owners present or represented at such meeting, exceeds fifty percent (50%).

Section 8 Association of Owners. In order to provide for the maintenance, repair, replacement, administration and operation of the Property and in compliance with the provisions of the Act, an association of the Co-Owners of the Dwelling Units in the Regime has been or shall be created by Declarant, to be known as the Bay Pointe Co-Owners Association, Inc. (herein referred to as the "Association") Each Owner shall be a member of the Association, but membership shall terminate when such person ceases to be an Owner, and such membership shall automatically transfer to the new Owner along with the transfer of the Dwelling Unit,

whether or not such transfer is stated in the conveyancing instrument Declarant shall appoint the members of the initial Board of Directors of the Association, which shall control during the period of its incumbency all matters which would be within the authority of either the Association or the Board of Directors under this Declaration, the By-Laws, or the Act, except that certain powers including the power of assessment shall be limited as provided in the By-Laws. By taking title to a Dwelling Unit, each Owner shall confer and shall be deemed to have conferred upon Declarant an irrevocable proxy to vote in such Owner's name, place, and stead on any and all matters on which the Co-Owners or any of them are entitled to vote under this Declaration, the By-Laws, or the Articles of Incorporation of the Association. Said initial Board of Directors shall serve until the time when Declarant turns over control of the Regime to the Co-owners, which shall take place no later than the earliest to occur of the following events

- (a) One hundred twenty (120) days after a total of Sixty-two (62) Dwelling Units (being 75%) in the Regime have been sold by Declarant;
- (b) One hundred twenty (120) days after substantial completion of all Dwelling Units and other Property which Declarant may elect to build on the Tract, or
- (c) The fifth anniversary of the date of this Declaration

The irrevocable proxy conferred upon Declarant shall terminate as of the date of such transfer. Upon such transfer of control, Declarant shall make available to the Association all books, records, plans, and other information in its possession regarding the activities of said initial Board of Directors and the operation of the Regime prior to such turnover. Thereafter, the Association shall elect a Board of Directors annually in accordance with and as prescribed by the By-Laws, and may take any other actions with respect to control of the Regime provided for by this Declaration, the By-Laws, or the Act. The Board of Directors shall be the governing body of the Association, representing all of the Co-Owners in providing for the management, maintenance, repair, replacement and upkeep of the Property

Section 9 Encroachments and Easements for Common Areas
 If, by reason of the location, construction, settling, or shifting of a Dwelling Unit, a Common Area now encroaches or shall hereafter encroach upon any Dwelling Unit, then in such event an easement shall be deemed to exist and run to the Co-Owners and the Association for the maintenance, use and enjoyment of such Common Area. Each Owner shall have an easement in common with each other Owner to use all General Common Areas, wherever located

Section 10 Easement for Utilities and Public and Quasi-Public Vehicles
 All public and quasi-public vehicles, including, but not limited to, police, fire, ambulance, and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles, shall have the right to enter upon the General Common Areas in the performance of their duties. A transferable easement is also reserved by Declarant, to be granted to the appropriate utilities and their agents, for ingress, egress, installation, replacement, repair, and maintenance of utilities lines, mains, and other necessary facilities and equipment within the Regime, including, but not limited to, water, sewers, gas, telephones, and electricity, provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines, or other utilities, except as designed and approved by Declarant (or as may be approved by the Board of Directors after all Dwelling Units which

may be added to the Regime have been completed), nor permit substantial impairment of any Owner's use and enjoyment of his Dwelling Unit, and the grantee by any such easement rights shall be responsible for repair or restoration of damage to any Property caused by its activity pursuant to such easement rights. Declarant and the Association shall have the right to grant such other easements, licenses, and rights-of-way as may be necessary for the proper operation and maintenance of the Regime.

Section 11 Easements to and from Additional Sections So long as all or any part of the Adjacent Real Estate is not annexed, Declarant reserves unto himself, his successors and assigns, for the use and benefit of that part of the Adjacent Real Estate not annexed, an easement to enter upon the General Common Areas to provide ingress and egress to the Adjacent Real Estate not annexed and to permit construction of buildings and other improvements upon such Adjacent Real Estate, and an easement for access to any and all necessary utility lines, mains, and other utility services for any buildings or improvements upon such Adjacent Real Estate, whether or not such buildings or improvements are to be added to the Regime. Declarant, or his successors or assigns, shall be responsible for repairing any damage to any Property arising out of the exercise of this easement. The easements herein reserved shall permit free and unrestricted use and access to the roadways and sidewalks by Declarant and any other owners or residents of the Adjacent Real Estate not annexed, their guests, invitees, and all public and quasi-public vehicles. The easements granted and reserved in this Section 11 shall be easements and covenants running with the land and accruing to the benefit of the Adjacent Real Estate.

Section 12 Restrictions on Use The following restrictions apply to the use and enjoyment of the Dwelling Units, General Common Areas, Limited Areas, and other Property:

- (a) All Dwelling Units shall be used exclusively for residential purposes and occupancy. Nothing herein contained shall restrict the use of any Dwelling Units or any other Property by Declarant during construction and sale periods for unit "models", sales and/or management offices, the location of construction trailers and equipment, and for storage of equipment materials and supplies.
- (b) No additional buildings shall be erected other than the Buildings designated in the Declaration and shown on the Plans.
- (c) Nothing shall be done or kept in any Dwelling Unit or in the Common Areas which will cause an increase in the rate of insurance on any Building or the contents thereof. No Owner shall permit anything to be done or kept in his or her Dwelling Unit or in the Common Areas which will result in a cancellation of insurance on any Building or contents thereof, or which would be in violation of any law or ordinance.
- (d) No waste shall be committed in the Dwelling Units, General Common Areas or Limited Areas.
- (e) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls of a Building, or on or upon any balcony or patio, and no sign, awning, canopy, shutter, radio or television antenna, or other attachment shall be affixed to or placed upon the exterior walls or roof or any other part of the Building, without the prior written consent of the Board of Directors.

- (f) No animals of any kind shall be raised, bred, or kept in any Dwelling Unit or in the Common Areas, except that small pet dogs, cats, or customary household pets may be kept in a Dwelling Unit, provided that such pet is not kept, bred, or maintained for any commercial purpose, and does not create a nuisance. Pets shall be permitted outdoors only under leash and accompanied by an Owner or other person, and an Owner shall be fully liable for any injury or damage to any person or to the Common Areas caused by his pet, and shall be responsible for removing from such areas such pet's waste materials. The Board of Directors may adopt such other rules and regulations regarding pets as it may deem appropriate, and in the event that in the judgment of the Board of Directors, any pet is causing or creating a nuisance or unreasonable disturbance or noise, such pet shall be permanently removed from the Property upon written notice of such determination by the Board of Directors.
- (g) Nothing shall be done or permitted in any Dwelling Unit which will impair the structural integrity of any Building or which would structurally change any Building, except as otherwise provided in the Declaration or these By-Laws; nor shall any Dwelling Unit be used in any unlawful manner or in any manner to cause injury to the reputation of the Regime or to be a nuisance, annoyance, inconvenience, or damage to other Owners or tenants of the Building or neighboring Buildings, including, without limiting the generality of the foregoing, noise by the use of any musical instruments, radios, televisions, loud speakers, electrical equipment, amplifiers, or other equipment or machines.
- (h) No clothes, sheets, blankets, rugs, laundry, or other similar objects or materials shall be hung out or exposed on any part of the Common Areas. The Common Areas shall be kept free and clear of rubbish, debris, and other unsightly material by the Owners, except as to specific areas designed for temporary storage thereof.
- (i) No industry, trade, or other commercial or religious activity, educational or otherwise, whether designed for profit, altruism or otherwise, shall be conducted, practiced, or permitted on the Property.
- (j) No "For Sale", "For Rent" or "For Lease" signs, nor any window advertising display of any kind shall be maintained or permitted on any part of the Property, provided, however, that the right is reserved by the Declarant to place or allow to be placed "For Sale" or "For Lease" signs on any unsold or unoccupied Dwelling Units.
- (k) All Owners and members of their families, their guests, or invitees, all lawful occupants of any Dwelling Unit and all other persons entitled to use the same and to use and enjoy the Common Areas or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be issued in writing by the Board of Directors governing the operation, use, and enjoyment of the Common Areas.
- (l) No boats, campers, trailers of any kind, buses, mobile homes, trucks, motorcycles, mini-bikes, or any other unconventional vehicles of any description, shall be permitted, parked, or stored anywhere within the

Property, except that any such vehicles may be parked or stored completely enclosed within a garage, or except as may be otherwise authorized in writing or by established rules and regulations governing such subject by the Board of Directors. Garage doors shall be kept closed except when entering or exiting the garage. The parking of any type or kind of vehicle upon the streets, other than temporary parking by guests and invitees of any Owner, is prohibited. Appurtenant to each Dwelling Unit is the right to use the parking area located in the driveway area immediately adjacent to that Dwelling Unit, as shown on the Plans. The number of vehicles which may be parked in such area by any Owner shall not exceed the number of automobiles for which such Owner's garage space is designated. No Owner shall park any vehicle on a recurrent or permanent basis in any location other than in such Owner's garage or designated parking area.

- (m) No Owner (other than Declarant) shall be allowed to plant trees, landscape, or to do any gardening in any of the Common Areas, except with the written consent of the Board of Directors.
- (n) All trash or refuse shall be stored in appropriate containers inside the Dwelling Unit (including garage) or designated trash areas and shall be made accessible for the regular trash collection system established by the Board of Directors.
- (o) No Owner shall install or maintain any interior or exterior window decor visible from outside the Dwelling Unit, other than interior window coverings having a white or light-colored back or lining.
- (p) The Co-Owners, Association, Board of Directors and Managing Agent shall observe and comply with the covenants and restrictions contained in the Declaration of Covenants, Conditions and Restrictions recorded October 24, 1974, as Instrument No. 62543 in Book 088, Page 75, in the office of the Recorder of Monroe County, Indiana, as amended (the "Covenants"). Reference is hereby made to the Covenants with respect to the establishment of The Pointe Service Association, Inc. (the "Master Association") as a central homeowner's association for the benefit of owners of units or lots in other condominium communities located near the Regime as well as the Co-Owners. Pursuant to the Covenants, Co-Owners become members of the Master Association and are required to pay dues and assessments for the maintenance, repair, operation and improvement of certain Common Areas and Community Facilities (as defined in the Covenants) for the mutual use, benefit and enjoyment of all Master Association members. Such dues and assessments to be paid to the Master Association shall be in addition to any dues and assessments levied pursuant to this Declaration.

Section 13 Maintenance, Decoration, Repairs and Replacements

A Common Areas The Association will be responsible for the maintenance, repair, decoration, restoration, and replacement of the Common Areas. Maintenance, decoration repairs, and replacements of the Common Areas shall be furnished by the Association and the cost thereof shall be part of the Common Expenses. The Association may elect to delegate such duties to a Managing Agent and may enter into a management contract for such purpose, provided that such agent and the terms of such contract

are approved by a majority of the vote present or represented at any meeting of the Association. Declarant or an entity affiliated with Declarant shall serve as the Managing Agent for the Regime so long as Declarant retains control of the Association, and shall perform all property management functions on behalf of the Association. Any management contract made or which is deemed to arise between the Association and Declarant (or any affiliate) shall be terminable by the Association without cause and without penalty upon thirty (30) days' written notice at any time after Declarant relinquishes control of the Association. The Board of Directors has the right to adopt such rules and regulations concerning the maintenance, repairs, use and enjoyment of the Common Areas as it deems appropriate, including the appointment of committees to oversee the same. Except as otherwise restricted by the Covenants, the Board of Directors shall have the exclusive right to determine the outside decor of each Dwelling Unit, including without limitation the color and type of paint and all decor appurtenant to the exterior of each individual Dwelling Unit.

B. Dwelling Units Each Owner shall control and have the right to determine the interior decor of his Dwelling Unit, but this shall not include the right to make structural changes to the Dwelling Unit, nor the right to use interior decor which in the discretion of the Board of Directors adversely affects the external appearance of the Dwelling Unit, as more particularly set forth in Section 12 of this Declaration. No act or omission which constitutes waste shall be committed or suffered in or upon any Dwelling Unit, the General Common Areas, or Limited Areas. Each Owner shall maintain and repair at his sole cost and expense all fixtures, appliances, equipment, and other improvements constituting a part of his Dwelling Unit under Sections 2 and 3 hereinabove, and each Owner shall promptly repair any condition or defect existing or occurring in his Dwelling Unit which, if not repaired, might adversely affect any Dwelling Unit, General Common Area or Limited Area. The Board of Directors and the Managing Agent shall have the right at reasonable times and upon reasonable prior notice (except in cases of emergency in which case no notice shall be required) to enter into the Dwelling Units and the Common Areas appurtenant to each Dwelling Unit to replace, repair, and maintain such Common Areas. In the event that any Owner fails or is unable to maintain or repair any condition or defect for which he is responsible and such condition or defect causes or threatens to cause immediate and substantial harm to any person or to any property outside his Dwelling Unit, the Board of Directors and the Managing Agent shall each have the right to enter such Owner's Dwelling Unit to remedy or repair such condition or defect, and any costs or expenses incurred in connection therewith shall be payable by such Owner upon demand by the Board of Directors or the Managing Agent. Nothing herein contained shall be construed to represent a contractual liability to the Owners on the part of the Declarant, the Association, or the Board of Directors for maintenance, repair, or replacement of any Dwelling Units, General Common Areas or Limited Areas, and the liability of the Association, the Board of Directors, and the Managing Agent in this regard shall be limited to damages resulting from gross negligence, recklessness, or intentional misconduct, unless otherwise provided in the management contract in the case of the Managing Agent.

Section 14 Alterations, Additions, and Improvements No Owner (other than Declarant) shall make any alterations, additions, or improvements to the Common Areas without the prior written approval of the Board of Directors, nor shall any Owner make any alterations to his respective Dwelling Unit which would impair the safety thereof, or which would substantially alter or adversely affect any structural portion of any Dwelling Unit or impair any easement or hereditament, without the unanimous consent of the Co-owners. Any alterations, additions, or

improvements made by any Owner wholly or in part outside his respective Dwelling Unit with the consent of the Board of Directors shall remain the property of that Owner and shall be owned, maintained, and insured by that Owner as part of his Dwelling Unit and deemed a part thereof for purposes of this Declaration. Upon the sale of his Dwelling Unit, such alterations, additions, or improvements shall be transferred along with such Dwelling Unit, and the purchaser shall be deemed to assume the prior Owner's maintenance and insurance obligations. If, in the reasonable discretion of the Board of Directors, such alteration, addition, or improvement is not being properly maintained, the Board of Directors may cause the same to be removed if such condition is not corrected by such Owner within ten (10) days after notice of such determination by the Board of Directors, and such Owner shall be liable for all costs incurred in connection with such removal, including attorneys' fees.

Section 15. Expansion. The provisions of this paragraph shall govern the expansion of the Regime and the allocation and reallocation of Percentage Interests and Percentage Votes.

A. Expansion by Sections. Declarant anticipates that it may construct from time to time additional Dwelling Units on various portions of the Adjacent Real Estate, for addition to the Regime in the manner hereinafter set forth. The general plan of development shall be consistent with the density and plan of development of the Dwelling Units to be contained upon the Real Estate, and the exterior architectural design of additional Buildings shall not be substantially inconsistent with the Building(s) constructed on the Real Estate. The maximum number of Dwelling Units to be contained in the Tract is Eighty-two (82), and the minimum number is Nineteen (19). Additional Sections shall not be added by Declarant at any time after the expiration of seven (7) years from the date of this Declaration, nor shall Declarant add any further sections if more than five (5) years have elapsed since the most recent prior section was added to the Regime. At any time, and from time to time, prior to the expiration of said seven (7) year period, Declarant, at its option, may cause all or any part of the Adjacent Real Estate to be added to the Regime, subject to the following conditions:

- (a) An Additional Section may not be annexed unless the Dwelling Units to be constructed in such Additional Section have been substantially completed, and unless the Plans therefor are completed, certified by a licensed professional engineer or registered architect as fully and accurately depicting the layout, location and dimensions of the Dwelling Units and recorded along with an Amendment conforming to the requirements of subsection C of this Section 15, and
- (b) The Dwelling Units on any Additional Sections shall be constructed with labor and material of comparable quality to the Dwelling Units previously constructed, although not necessarily of similar design, either as to interior floor plan or structural design. Declarant reserves the right to determine all developmental standards of each Additional Section other than those particularly set forth in this Section 15.

Declarant expressly reserves the right not to annex any or all of the Adjacent Real Estate. Upon annexation of each Additional Section to the Regime, each Owner shall acquire a Percentage Interest, as recomputed in accordance with this Section 15, in the Common Areas in such Additional Section, at which time each Co-Owner thenceforth shall also incur and pay his Percentage Interest share of the Common Expenses attendant with such Additional Section, along with the Common Expenses attendant with

the Real Estate and all Additional Sections previously added to the Regime.

B. Percentage Interest. The Owner of each Dwelling Unit shall have a Percentage Interest appurtenant to his Dwelling Unit which is based upon the size of his Dwelling Unit. In the attached Exhibit C there is designated the approximate interior square footage of floor space (excluding attic and unenclosed floor space) of each of the three (3) categories of Dwelling Units in the Regime and the Percentage Interest which corresponds with the approximate interior square footage of each category of Dwelling Unit. The determination of the square footage and corresponding Percentage Interest, as they appear on said Exhibit C, shall be conclusive upon the Owners of the corresponding categories of Dwelling Units. The Percentage Interest for any particular Dwelling Unit is also determined in Exhibit C, according to the category in which the number of the particular Dwelling Unit appears. In any calculation or determination of the Percentage Interest, the figure obtained shall be rounded to the nearest one-thousandth of a percent and shall be so presented for all purposes of conveyance and for purposes of this Declaration.

C Procedures For Amendment. As each Additional Section is developed, Declarant may record an Amendment annexing and adding such Additional Section to this Declaration and making it a part of the Regime. Declarant reserves the right to annex Additional Sections thereof in any manner or order it may choose. Such Amendment shall contain the following:

- (a) A description of the portion of the Adjacent Real Estate to be annexed;
- (b) A description of the Dwelling Units described in a manner consistent with this Declaration and the Act,
- (c) The Percentage Interest of each of the Dwelling Units in the Regime after such annexation, computed in accordance with the Formula.

D Rights of Owners Affected By Expansion Each Owner, by acceptance of a deed to a Dwelling Unit, acknowledges, consents and agrees that the following rights and conditions shall be applicable upon the recording of each Amendment:

- (a) The Additional Section described in each Amendment shall be governed in all applicable respects by the provisions of this Declaration.
- (b) The Percentage Interest and Percentage Vote applicable to each Dwelling Unit shall be automatically re-allocated in accordance with the figure set forth in such Amendment, which reallocation shall be in accordance with the Formula. On recording of each Amendment, the amount by which the Percentage Interest of a Dwelling Unit Owner is reduced shall thereupon divest from such Dwelling Unit Owner and revert to the Declarant, its successors and assigns.
- (c) Each deed, mortgage, or other instrument affecting a Dwelling Unit shall be deemed to be subject to the limitation that the Percentage Interest appurtenant to each Dwelling Unit shall be, upon the recording of each Amendment, altered in accordance with each Amendment and the Formula.
- (d) The Percentage Interest in the Common Areas shall be deemed to include any additional Common Areas annexed hereto by such Amendment. Each Amendment shall

and convey to the Owners the appropriate Percentage Interest in the Common Areas added by such Amendment, and each deed, mortgage, or other instrument affecting a Dwelling Unit shall be deemed to include and attach to such additional Common Areas.

- (e) The recording of an Amendment shall not alter the amount of the lien for Common Expenses previously assessed to a Dwelling Unit which was already a part of the Regime prior to such recording. The lien for the share of Common Expenses from and after such recording shall be assessed and paid based upon the recomputed Percentage Interest in the Regular Assessments for the next fiscal year.
- (f) Each Owner agrees to execute and deliver such documents as are necessary or desirable to accomplish the annexation of the Additional Sections in the Tract in accordance with the provisions of this Section 15

E. Removal From Tract. In the event Declarant elects not to annex all or part of the Adjacent Real Estate, as permitted by this Section 15, Declarant shall file an Amendment which shall permanently remove that portion of the Adjacent Real Estate which Declarant elects not to annex, and said portion thereafter shall not be subject to any possibility of becoming a part of the Regime. In addition, any portion of the Adjacent Real Estate for which an Amendment has not been filed within seven (7) years of the date hereof shall automatically be removed from the possibility of becoming a part of the Regime when, because of the annexation of all of the Adjacent Real Estate, the passage of time, or the filing of an amendment under this Subsection E, the Regime is no longer subject to expansion, the Percentage Interest then in effect shall not be altered unless one hundred percent (100%) of the Percentage Vote approves such change, and unless Mortgagees of at least two-thirds of the Dwelling Units in the Regime consent to such change

Section 16. Assessments.

A. Liability for Assessments As of the first day of the first month following its addition to the Regime, each Dwelling Unit and the Percentage Interest appurtenant thereto shall be subject to the Regular Assessments and Special Assessments for Common Expenses as provided in this Section 16, and all such Assessments shall constitute liens upon each Dwelling Unit and appurtenant Percentage Interest as of the date of determination of each such Assessment by the Association, as further provided and described in the By-Laws. The date(s) on which Assessments are due and payable shall be as specified in this Declaration or the By-Laws, or if not so specified, then as determined by the Board of Directors. In addition, each Owner shall be personally liable for the amounts of any and all Assessments which become due and payable during the period in which such Owner holds title to a Dwelling Unit. No Owner shall be personally liable for any Assessments which first became due and payable prior to the time such Owner took title to a Dwelling Unit unless he or she expressly assumes such liability, except as may otherwise be required by the Act. However, a conveyance by an Owner of his or her Dwelling Unit shall not operate to release or limit the liability of an Owner for Assessments becoming due and payable while such Owner holds title to a Dwelling Unit. The lien of any Assessment shall be subordinate to any first mortgage on any Dwelling Unit which was recorded before the time when said Assessment first became delinquent. Notwithstanding any other provision of this Declaration or the By-Laws, the Declarant shall not be liable for any Assessments on any unoccupied Dwelling Unit(s) owned by Declarant until the later of (i) thirty-six months from the date of this Declaration, or (ii) the date of

which Declarant turns over control of the Association, subject however to the obligation of the Declarant to make up any deficits of the Association during such period, the provisions of Section 6.03 of the By-Laws guaranteeing maximum annual assessments during such period and to any contrary provision of the Act

B Collection of Assessments. Each Assessment shall be due and payable within ten (10) days of the due date thereof as specified in this Declaration, in the By-Laws, or if not so specified, then within ten (10) days of any due date(s) determined by the Board of Directors, and the date marking the end of the applicable time period allowed herein for the payment of such Assessment is hereby termed the "Delinquency Date". Any Assessment which is not paid in full by the Delinquency Date shall be deemed delinquent without further notice or demand to the defaulting Owner, and shall bear interest on the unpaid balance thereof from the Delinquency Date until fully paid, at a rate of interest equal to eighteen percent (18%) per annum. In the event that any costs or expenses, including attorney's fees, are incurred by or on behalf of the Association with respect to the recovery or collection of any delinquent Assessment, all such costs and fees shall be due and payable immediately by such delinquent Owner and shall bear interest from the dates incurred until paid in full, at a rate of interest equal to eighteen (18%) per annum. All interest and all costs and expenses payable hereunder with respect to a delinquent Assessment shall be added to and deemed a part of such delinquent Assessment and shall constitute a lien on the delinquent Owner's Dwelling Unit and Percentage Interest as of the date on which such delinquent Assessment first became a lien. In the event that any Assessment is not fully paid on or before the Delinquency Date, the Association shall be entitled to accelerate and declare due and payable in full all installments of Assessments due for the year in which such delinquency occurs, and to enforce payment of the same by foreclosure of said lien and/or other appropriate legal proceedings in accordance with the laws of the State of Indiana. Any such lien against a Dwelling Unit and its appurtenant Percentage Interest shall be subordinate to any first Mortgage covering such Dwelling Unit and Percentage Interest if and to the extent such Mortgage was recorded prior to the due date of the delinquent Assessments

C The Tract is located within a planned unit type development known as "The Pointe" and as such may be liable for its pro rata portion of assessments and charges which may be levied from time to time by The Pointe Service Association, Inc. Such assessments and expenses to the extent levied by The Pointe Service Association, Inc. shall be properly treated as a Common Expense for purposes of this Declaration, if not separately billed to Owners

Section 17. Insurance.

A The Association shall obtain fire and extended coverage insurance insuring all Dwelling Units in the Regime including all fixtures, appliances, and other improvements permanently installed and sold by Declarant as a part thereof, and all Common Areas in the Regime, in an amount equal to the full replacement cost thereof from time to time, as determined by a qualified appraiser. Such insurance shall be in the form of a master casualty policy for the entire Regime and shall contain the following endorsements, if and to the extent obtainable at a reasonable cost in the State of Indiana: (i) replacement cost, (ii) inflation guard, (iii) demolition cost, contingent liability, and increased construction cost in connection with building code requirements, (iv) steam boiler coverage (if applicable), and (v) all matters customarily covered under a "special condominium endorsement".

notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to Section 19. In the event that all or any portion of the Regime shall be determined to be in a flood hazard zone, the Association shall also obtain a master policy of flood insurance on the Dwelling Units, Buildings, and Common Areas within such flood hazard zone, in an amount at least equal to the lesser of 100% of the current replacement cost of all insurable property within the flood hazard area, or the maximum coverage available for such property under the National Flood Insurance Program. The amount of coverage shall be increased from time to time to cover all additions to the Regime, and all such policies shall meet the requirements of subsection E of this Section. The proceeds shall be payable to the Association, who shall hold and apply such proceeds as trustee for the individual Owners and Mortgagees, as their respective interests shall appear. The proceeds shall be used or disbursed only in accordance with the provisions of this Section 17 and of Section 19 of this Declaration, as applicable, and any surety bond or bonds obtained by the Board of Directors covering the officers of the Regime as provided in subsection D of this Section shall specifically include protections for any insurance proceeds so received.

B. The Association also shall obtain comprehensive public liability insurance together with Workmen's Compensation Insurance, employers liability insurance, and such other liability insurance, with such coverages and limits, as the Board of Directors deems appropriate; provided, however, that public liability insurance shall have liability limits of not less than Three Million Dollars (\$3,000,000.00) for personal injury and One Million Dollars (\$1,000,000.00) for property damage, and provided further, that all such policies shall meet the requirements of Subsection E of this Section 17. Such insurance shall inure to the benefit of each individual Owner, the Association, the Board of Directors, and any Managing Agent or company acting on behalf of the Association. The individual Owners, as well as any lessees of any Owners, shall have the right to recover losses insured for their benefit.

C Each Owner shall have the right to purchase any additional insurance as he or she may deem necessary, and each Owner shall be solely responsible for loss of or damage to the contents of their own Dwelling Unit, however caused, including all floor and wall coverings, appliances, fixtures, and betterments installed by the Owner, and for loss of or damage to any of his or her personal property, whether or not stored or kept in such Dwelling Unit. Each Owner shall be solely responsible for obtaining their own insurance to cover any such loss and risk.

D The Association shall obtain a fidelity bond indemnifying the Association, the Board of Directors, and the Co-Owners for loss of funds resulting from fraudulent or dishonest acts of any employee or officer of the Association or of any other person handling the funds of the Association or the Co-Owners, which bond shall be written in an amount equal to at least One Hundred Fifty Percent (150%) of the annual Common Expenses.

E. All policies of insurance of the character described in subsections A and B of this Section 17 shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, the Board of Directors, the Declarant, any Managing Agent, their respective employees and agents, or the Owners, and shall further contain a clause whereby the insurer waives any defenses based on acts of individual Owners whose interests are insured thereunder, and shall cover claims of one or more insured parties against other insured parties. All such policies shall name the Association

ation, for the use and benefit of the Owners, as the insured, shall provide that the coverage thereunder is primary even if an Owner has other insurance covering the same loss; shall show the Association or insurance trustee, in trust for each Owner and Mortgagee, as the party to which proceeds shall be payable, shall contain a standard mortgage clause and name FNMA and all Mortgagees as mortgagee; and shall prohibit any cancellation or substantial modification to coverage without at least ten (10) day's prior written notice to the Association and to the Mortgagees. All policies of insurance maintained by the Association pursuant to this Section 17 shall provide such coverages and be in such amounts as may be required from time to time by FNMA, FHLMC, FHA or VA. Upon obtaining or changing any policies of insurance authorized or required by this Section 17, notice of the same shall be sent by the Secretary of the Association to each Owner and each Mortgagee whose interest may be affected thereby.

Section 18 Condemnation In the event that all or any part of the Regime shall be taken or condemned by any competent authority, or if any condemnation proceeding shall be instituted with respect to all or any part of the Regime, the Association shall have the right to appear and defend in such proceedings on behalf of the Owners affected thereby and to prosecute on behalf of any such Owners any action or proceeding, at law or in equity, as it may deem appropriate for the adequate protection and compensation of all Owners affected by any confiscatory act of any public body. The proceeds obtained by the Association as a result of any such action or proceeding shall be received by the Association and shall be applied by the Association as follows: (a) the portion of such award which is allocated by the court making such award, or if not so allocated, then as determined by a two-thirds (2/3) majority of the Percentage Vote at a special meeting called for the purpose of making such allocation, to the buildings or units taken (such portion hereinafter called the "Building Award"), shall be distributed among the Owners whose Dwelling Units were taken in proportion to the relative fair market values of the Dwelling Units so taken as of the date of such taking, or if such values cannot be determined, then equally among such Owners, (b) the balance of such award after payment of the Building Award shall be paid, first, to reimburse the Association for its costs and expenses in obtaining such award, and the balance, if any, shall be paid to each Co-Owner in the Regime in proportion to his Percentage Interest. No amounts or damages shall be paid by the Association to any Owner for any partial taking, partial loss of use, or impedance of access as to any Dwelling Unit, except to the extent that the amount of any such award is specifically determined by the court making such award or by a two-thirds (2/3) vote of the Association. Nothing in this Section 18 shall be construed to prevent any Owner affected by any condemnation or confiscatory action of any public body from participating in any condemnation proceedings or from prosecuting any action for any recovery for any confiscation of his property, but such Owner shall not be entitled to distribution out of the proceeds received by the Association to the extent that such Owner recovers sums or compensation for the same or similar damages as are the basis of the award to the Association. Nothing herein contained shall be construed to require payment of proceeds to an Owner in derogation of any rights such Owner's Mortgagee may have to such proceeds.

Section 19 Casualty and Restoration In the event of any damage to or destruction of the Property by fire or other casualty, the following provisions shall be applicable:

- (a) Partial Destruction In the event of less than complete destruction (as defined in subsection (b) hereinbelow) of the Dwelling Units in all Buildings, all Dwelling Units and other Property shall be promptly

repaired and restored. The proceeds of the insurance shall be applied to the cost of such repair and restoration. If the insurance proceeds are not adequate to cover the cost of reconstruction or in the event there are no proceeds, the amounts needed to complete the repair and restoration beyond available insurance proceeds shall be paid by all Co-owners as a Common Expense. The application and use of such proceeds shall be determined by the Board of Directors of the Association acting as trustee under Section 17.A, or by any Mortgagee electing to act as trustee in place of the Association, and when so determined in good faith shall be binding upon all Owners and Mortgagees.

- (b) Restoration in the Event of Complete Destruction In the event that two-thirds or more of the Dwelling Units in the Regime are damaged or destroyed by fire or other casualty, a special meeting of the Association shall be called. If, at that meeting, a determination is made, by vote of at least a two-thirds (2/3) majority of the Percentage Votes of all Owners in the Regime, that a complete destruction has occurred so that the Buildings and other Property in the Regime shall not be repaired or restored, then the proceeds of insurance and the Property in the Regime shall be dealt with and disposed of in accordance with Sections 19 and 21 of the Act, as either may be amended from time to time, or in accordance with any substitute provisions governing such matters as may be enacted subsequent to the date of this Declaration, with distributions of proceeds to be made to the Owners in proportion to the relative fair market values of their respective Dwelling Units as of the date of such destruction, if and to the extent and values can be determined and if and to the extent such distribution is permitted by applicable law
- (c) Restoration, for purposes of subparagraphs (a) and (b) above, shall mean construction or rebuilding of the Dwelling Units and other Property to substantially the same condition as they existed immediately prior to the destruction and with a similar quality of materials and workmanship and similar type of design and architecture, but excluding all improvements and property added to or kept in or about such Dwelling Units by any Owner.
- (d) In the event restoration of Dwelling Units is necessary, and notwithstanding any provision in Sections 17 or 19 to the contrary, the insurance funds for such restoration shall be disbursed by any Mortgagee (if it elects to do so) which holds mortgages on 51% or more of the number of Dwelling Units that need to be restored, otherwise, the insurance funds shall be disbursed by the Association. Such distribution and payment of funds shall be in the manner and in accordance with the procedure normally used when disbursing funds for initial construction. Each insurer shall be notified of this provision by the Owners and each policy of insurance shall comply herewith. Nothing contained in Sections 17 or 19 shall be construed to require payment of any proceeds to an Owner in derogation of any rights such Owner's Mortgagee may have to such proceeds

Section 20 Negligence. Each Owner shall be liable for the expense of any maintenance, repair, or replacement of any of the Property which becomes necessary by reason of his negligence or that of any member of his family or household.

employees, agents, or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy, or abandonment of his Dwelling Unit or its appurtenances or of the Common Areas.

Section 21. Real Estate Taxes. Real estate taxes are to be separately taxed to each Dwelling Unit and the Percentage Interest connected therewith, as provided in the Act. In the event that for any year real estate taxes are not separately assessed and taxed to each Dwelling Unit, but are assessed and taxed on the Real Estate as a whole, then each Owner shall pay his proportionate share of the real estate taxes. Each Owner's proportionate share will be equal to the Percentage Interest then appurtenant to the Owner's Dwelling Unit. Declarant will pay for the taxes on the Adjacent Real Estate until annexed, at which time the Owners will pay all of same according to their respective Percentage Interests. The worksheets of the Clear Creek Township Assessor shall be used to determine assessment valuation for purposes of this Section 21.

Section 22. Utilities. Each Owner shall pay for those utilities provided to his Dwelling Unit which are separately billed or metered for his Dwelling Unit. Utilities which are not separately billed or metered shall be treated and paid as part of the Common Expenses.

Section 23 Use and Sale of Dwelling Units. For the purpose of maintaining the residential character of the Regime, and for the protection of the Co-Owners, Declarant specifically reserves the mode and method of the original sale of each Dwelling Unit until the last Dwelling Unit in the Regime is sold. As Declarant adds Additional Sections, Declarant may designate any Dwelling Unit therein for location of a sales and management office, but no more than one Dwelling Unit within the Regime shall be reserved for such purpose at any one time. The Dwelling Unit so designated may also be used, at the option of Declarant, as a furnished or unfurnished model, and Declarant may further designate from time to time, at its option, any other Dwelling Units in the Regime still held by Declarant, for use as furnished or unfurnished models. Any Dwelling Unit designated by Declarant for use as a model and/or as a sales and management office may, at Declarant's option, either be owned by Declarant or sold and leased back by Declarant for such purpose. The right of Declarant to so designate and use such Dwelling Units shall continue so long as Declarant owns or may construct any Dwelling Units within the Tract, and no action of the Association or any Owner shall impair such right. Upon discontinuation of such use by Declarant, each such Dwelling Unit shall not become Common Area, but shall be treated as a Dwelling Unit for all purposes of this Declaration. Other than as provided in this Section 23, all Dwelling Units in the Regime shall be used for residential purposes only.

Section 24 Amendment of Declaration Except as otherwise provided in this Declaration, this Declaration may be amended in the following manner:

- (a) Notice Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered, including any annual meeting
- (b) Resolution A resolution to adopt a proposed amendment may be proposed by the Board of Directors or by the Owners of at least a majority of the Percentage Vote
- (c) Meeting The resolution concerning a proposed amendment must be adopted by the appropriate majority of the

at a meeting duly called and held in accordance with the provisions of the By-Laws.

- (d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than a majority of the Percentage Vote. In the event any Dwelling Unit is subject to a mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions of the By-Laws.
- (e) Amendments. No amendment to this Declaration shall be adopted which changes:
 - (1) The Percentage Interest with respect to any Dwelling Unit or the share of an Owner's liability for Common Expenses, without the approval of ninety percent (90%) of the Percentage Vote and the approval of all Mortgagees having mortgages on any Dwelling Units in the Regime, except as provided herein in regard to annexation or otherwise
 - (2) The provisions of Section 19 of this Declaration with respect to reconstruction or repair in the event of fire or casualty, without the approval of sixty-seven percent (67%) of the Percentage Vote and the unanimous approval of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the By-Laws;
 - (3) The provisions of Section 15 of this Declaration, except by Declarant in the manner provided therein, so long as the Regime is still subject to expansion, or
 - (4) The provisions of Sections 11, 12, 16, 23, 24, 25, and 26 of this Declaration without the consent of the Declarant so long as the Regime is still subject to expansion, or
 - (5) Any provision of the Declaration or By-Laws which would be deemed to be of a material nature by the Federal National Mortgage Association ("FNMA") under Section 402.02 of Chapter 3 of FNMA's current Lending Guide or any subsequent, relevant guidelines which FNMA may issue, or which would be deemed of a material nature under the regulations or requirements of the Veterans Administration without the approval of at least two-thirds of the Percentage Vote and the approval of Mortgagees having mortgages on at least two-thirds of the Dwelling Units in the Regime.

Any Mortgagee which has been duly notified of the nature of any proposed amendment shall be deemed to have approved the same if said Mortgagee or a representative thereof fails to appear at the meeting in which such amendment is to be considered (if proper notice of such meeting was timely given to such Mortgagee). In the event that a proposed amendment is one permitted by this Section and is deemed by the Board of Directors to be one which is not of a material nature, the Board of Directors shall notify all Mortgagees whose interests have been made known to the Board of Directors of the nature of such amendment.

amendment shall be conclusively deemed not material if no Mortgagee so notified objects to such proposed amendment within thirty (30) days of the date such notices are mailed and if such notice advises the Mortgagees of the time limitation contained in this sentence.

- (f) Recording. Each amendment to the Declaration shall be executed by Declarant only in any case where Declarant has the right to amend this Declaration without any further consent or approval, and otherwise by the President and Secretary of the Association, provided that any amendment requiring the consent of Declarant shall contain Declarant's signed consent. All amendments shall be recorded in the Office of the Recorder of Monroe County, Indiana, and no amendment shall become effective until so recorded.

The Amendments dealing with the Additional Sections and reassignment of Percentage Interests, however, are not subject to the conditions of this Section 24 and may be filed or adopted by the Declarant at any time without any notice to or consent by the Association, any Owner, or any Mortgagee. In addition, the provisions of this Section 24 are subject to the rights given to the Declarant by virtue of the irrevocable proxies held by Declarant on behalf of the respective Owners, as provided in Section 8 hereinabove

Section 25 Amendments to Facilitate Mortgage Purchases

In the event that FNMA, FHLMC, FHA, VA, or other purchaser, guarantor, or insurer of a mortgage of any property in this Regime should impose any generally applicable requirements pertaining to the attributes of the Regime or the provisions of this Declaration or the By-Laws, for purposes of qualifying for or agreeing to the purchase, guaranty, or insuring of any such mortgage, the Declarant or Board of Directors may fully satisfy such requirements, and shall have the right to amend this Declaration in accordance therewith, without the approval or consent of any Owner or Mortgagee.

Section 26. Reservation of Rights.

Declarant reserves the right to amend this Declaration without consent of the respective Owners or the Association until the control of the Regime is turned over to the Association, provided that no such amendment shall materially impair the rights of any Mortgagee, nor substantially deprive the Co-owners, or any of them, of the rights conferred upon them by this Declaration or the By-Laws.

Section 27. Enforcement of Covenants and Restrictions.

The various covenants and restrictions applicable to the use and enjoyment of the Dwelling Units, as set forth in this Declaration, are for the mutual benefit and protection of the present and future Owners and shall run with the land and shall be binding upon and inure to the benefit of every Owner, the Co-Owners, or the Board of Directors on behalf of the Association, and their respective heirs, successors and assigns. Available relief in any action brought to enforce this Declaration shall include damages and injunctive relief against any violation or attempted violation of these provisions, and the recovery of any damages, costs, and attorneys' fees incurred by any party successfully enforcing this Declaration against any other party, but there shall be no right of reversion or forfeiture of title resulting from any violation. In addition, the Board of Directors is hereby authorized, during the period of any default or delinquency, to take actions to enforce compliance with such provisions, rules, regulations or decisions, including, without limitation (i) the revocation of a defaulting Owner's right to use General Common Areas designed for recreational purposes, and (ii) the suspension of a defaulting Owner's right to use such areas.

provided, however, that no such enforcement action shall affect the rights of a Mortgagee hereunder.

Section 28. Costs and Attorneys' Fees In a proceeding arising because of an alleged failure of an Owner to make any required payments or to comply with any provision of this Declaration, the Act, the By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, the party initiating such proceeding shall be entitled to recover its reasonable attorneys' fees incurred in connection with such proceeding, if it is found or agreed in such proceeding that a failure to make payment as required hereby or a violation of this Declaration, the Act, the By-Laws, or the rules and regulations adopted pursuant thereto, as each may be amended from time to time, did occur.

Section 29. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants, and occupants of the Dwelling Units shall be subject to and shall comply with the provisions of this Declaration, the Amendments, the Act, the By-Laws, the Covenants and the rules and regulations as adopted by the Board of Directors, as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Amendments, the Act, the By-Laws, the Covenants and any rules and regulations adopted pursuant thereto, as each may be amended from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Dwelling Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. Each Owner agrees to execute and deliver such other documents, if any, as may be necessary or desirable to comply with the Act as it may be amended from time to time. All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Dwelling Unit or Dwelling Units or any part of the Property in any manner shall be subject to the Declaration, the Amendments, the Act, the By-Laws, the Covenants and the Rules and regulations applicable thereto, as each may be amended from time to time.

Section 30. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by abandonment of his Dwelling Unit. The Association does not waive the right to hold a lien on the Dwelling Unit and foreclose the same by any failure to take action when any payment of any Assessment is not timely made when due by any Owner.

Section 31. Construction and Severability. This Declaration and the By-Laws are intended to comply with the provisions of the Act, and shall be construed whenever possible to be consistent therewith. The invalidity of any covenant, restriction, condition, limitation, or other provision of this Declaration or the By-Laws filed herewith shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration or the attached By-Laws. If any of the options, privileges, covenants, rights, or interests created by this Declaration would otherwise be unlawful or void for violation of (a) the rule against perpetuities or any analogous statutory provisions, (b) the rule restricting restraints or alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the date of the Declaration.

Section 32. Floor Plans. The Plans pertaining to the Real Estate, as described in Section 1(u) of this Declaration,

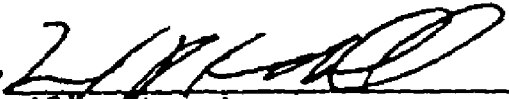
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incorporated into this Declaration by reference, and shall be recorded contemporaneously with the recording of this Declaration in the Office of the Recorder of Monroe County, Indiana.

Section 33. Notices. Any notice required or permitted to be sent under this Declaration or the By-Laws shall be sufficient if delivered personally or sent by first-class U. S. Mail, postage prepaid, to the address shown on the records of the Association, provided, however, that notices to Mortgagees shall be sent by U. S. Certified Mail, Return Receipt Requested, or by U. S. Registered Mail.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day, month and year first above written.

QUALITY VILLAGE BUILDERS, INC.

By 
(Signature)

MARK KENDALL, Pres.
(Printed Name and Title)

ATTEST:


(Signature)

(Printed Name and Title)

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

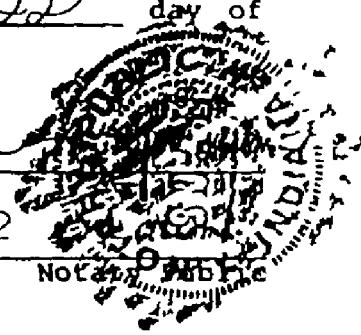
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Before me, a Notary Public in and for said County and State, personally appeared MAX A. Kendall, the PRESIDENT, and _____, the _____, respectively, of QUALITY VILLAGE BUILDERS, INC. who acknowledged the execution of the above and foregoing Declaration of Bay Pointe Horizontal Property Regime for and on behalf of said Corporation.

Witness my hand and Notarial Seal this 22 day of OCTOBER, 1986

Signature Robin R

Printed Robin R



My Commission Expires

Resident of MONROE County

2-17-90

This instrument was prepared by Phillip J Stoffregen, ICE MILLER DONADIO & RYAN, One American Square, Box 82001, Indianapolis, Indiana 46282, telephone: (317) 236-2100

MONROE SECTION ONE

EXHIBIT "A"

Part of the Southeast quarter of Section 22, Township 7 North, Range 1 West, In Monroe County, Indiana, being more particularly described as follows

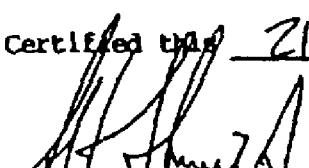
COMMENCING at an existing stone marking the northwest corner of the said southeast quarter section; thence NORTH 89 degrees 46 minutes 58 seconds WEST along the north line of the southwest quarter of said section 374 27 feet to the boundary line of Monroe Reservoir, being on the U.S. Government Fee Line as shown on drawings on file in the Office of the District Engineer, Corps of Engineers, Louisville, Kentucky; thence the next five (5) courses being along said boundary line of Monroe Reservoir: (1) SOUTH 17 degrees 46 minutes 16 seconds WEST 179.67 feet; (2) SOUTH 3 degrees 01 minute 44 seconds EAST 94 60 feet, (3) SOUTH 61 degrees 38 minutes 44 seconds EAST 125.40 feet; (4) SOUTH 65 degrees 34 minutes 16 seconds WEST 75.90 feet, (5) SOUTH 36 degrees 06 minutes 16 seconds WEST 134.50 feet; thence SOUTH 81 degrees 08 minutes 58 seconds EAST 183 92 feet to the southwest corner of the Woodbridge Expansion area designated Exhibit "F" in Miscellaneous Book 103, pages 334-442 in the office of the Recorder of said county, thence the next two (2) courses being along said southerly line of Woodbridge Expansion area (1) SOUTH 88 degrees 22 minutes 37 seconds EAST 300 00 feet; (2) SOUTH 67 degrees 26 minutes 02 seconds EAST 129 00 feet to the southerly line of Parcel VI of the Golf Course as recorded in Deed Record 292, page 470 in the office of the Recorder of said county, thence the next two (2) courses being along said southerly line of Parcel VI (1) SOUTH 33 degrees 23 minutes 43 seconds EAST 161.70 feet; (2) NORTH 74 degrees 51 minutes 22 seconds EAST 225.84 feet; thence NORTH 88 degrees 13 minutes 33 seconds EAST 60.00 feet; thence NORTH 1 degree 46 minutes 27 seconds WEST 58.55 feet to the point of beginning; thence NORTH 1 degree 46 minutes 27 seconds WEST 385 48 feet; thence SOUTH 54 degrees 40 minutes 55 seconds EAST 19 07 feet, thence SOUTH 89 degrees 37 minutes 36 seconds EAST 40 03 feet to a tangent curve the radius point of which bears NORTH 1 degree 46 minutes 37 seconds WEST 88 00 feet; thence northeasterly along said curve 46.07 feet, thence SOUTH 27 degrees 12 minutes 21 seconds EAST 215 00 feet; thence SOUTH 11 degrees 34 minutes 43 seconds WEST 209.63 feet to a point on the north line of Water's Edge Phase I as recorded in Horizontal Plat Book 2, page 116, in the office of the Recorder of said county; thence along the north line of said Water's Edge NORTH 86 degrees 14 minutes 41 seconds WEST 143 79 feet and to the point of beginning, containing 1.39 acres more or less.

This certification does not take into consideration additional facts that an accurate and correct title search and/or examination might disclose.

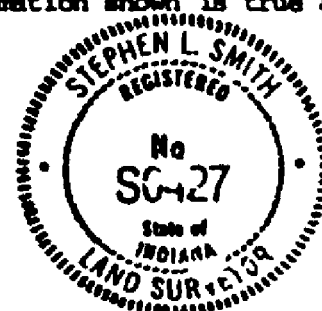
Evidence of easements have not been located in the field and are not shown on this survey drawing.

Subject to the above reservation, I hereby certify that the survey work performed on the project shown hereon was performed either by me or under my direct supervision and control and that all information shown is true and correct to the best of my knowledge and belief.

Certified this 21st day of October 1986.



Stephen L. Smith
Registered Land Surveyor No. S0427
State of Indiana



CODE OF BY-LAWS OF

BAY POINTE CO-OWNERS ASSOCIATION, INC.

A NOT-FOR-PROFIT INDIANA CORPORATION

ARTICLE I

Identification and Applicability

Section 1.01. Identification and Adoption. These By-laws are adopted simultaneously with the execution of a certain Declaration of Bay Pointe Horizontal Property Regime, to which these By-laws are attached and of which they are made a part. The Declaration is incorporated herein by reference and all of the covenants, conditions rights, restrictions, and liabilities therein contained shall apply to and govern the interpretation of these By-laws. The definitions and terms as defined and used in the Declaration shall have the same meanings in these By-laws, and reference is hereby made to the definitions in Section 1 of the Declaration. The provisions of these By-laws shall apply to the Property and to the administration and conduct of the affairs of the Association.

Section 1.02. Individual Application. All of the Owners, tenants, their guests and invitees, or any other person who might now or hereafter use or occupy a Dwelling Unit or any part of the Property shall be subject to the rules, restrictions, terms and conditions set forth in the Declaration, these By-laws, and the Act, as the same may be amended from time to time.

ARTICLE II

Meetings of Association

Section 2.01. Purpose of Meetings. At least annually and at such other times as may be necessary or appropriate, a meeting of the Co-Owners shall be held for the purpose of electing the Board of Directors, approving the annual budget, providing for the collection of Common Expenses, and for such other purposes as may be required by the Declaration, these By-laws, or the Act.

Section 2.02. Annual Meetings. The first annual meeting shall not be held until the time of turnover of control of the Regime by Declarant or at such earlier time or times as may be determined by the Declarant. All subsequent annual meetings shall be held on any date in the month of July selected by the Board of Directors. At each annual meeting, the Co-Owners shall elect the Board of Directors of the Association in accordance with the provisions of these By-laws and transact such other business as may properly come before the meeting.

Section 2.03. Special Meetings. A special meeting of the members of the Association may be called by resolution of the Board of Directors or upon a written petition of the Co-Owners who have not less than ten percent (10%) of the Percentage Vote. The resolution or petition shall be presented to the President or Secretary of the Association and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 2.04. Notice and Place of Meetings. All meetings of the members of the Association shall be held at such location within the State of Indiana as may be designated by the Board of Directors. Written notice stating the date, time, place of any meeting, and in the case of a special meeting the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary of the Association to each Co-Owner and, if applicable, to any Mortgagee not less than fourteen (14) days prior to the date of such meeting. If at any meeting an amendment to the Declaration or these By-laws is to be considered, the notice of such meeting shall describe the nature of such proposed amendment. The notice shall be mailed by first-class U.S. Mail, postage prepaid, or delivered to the Co-Owners at their respective addresses as the same shall appear upon the records of the Association, and by U.S. Certified Mail, Return Receipt Requested to the Mortgagees at their respective addresses as they shall appear on the records of the Association, by such means as provided in Section 33 of the Declaration. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

Section 2.05. Voting.

(a) **Number of Votes.** Each Owner shall be entitled to cast his or her Percentage Vote on each matter coming before the meeting. The total Percentage Vote for or against any matter shall then be aggregated to determine the respective proportions of Co-Owners supporting or opposing such matter, or such aggregate proportion shall be divided by the total Percentage Vote represented at such meeting by owners who are present or represented at such meeting, to determine the respective proportions of Owners present or represented at such meeting supporting or opposing such matter.

(b) **Multiple Owners.** When the Owner of a Dwelling Unit constitutes more than one person or entity, or is a partnership, there shall be only one voting representative entitled to cast the Percentage Vote allocable to that Dwelling Unit. At the time of acquisition of title to a Dwelling Unit by a multiple Owner or a partnership, those persons constituting such Owner or the partners shall file with the Secretary of the Association an irrevocable proxy appointing one of such persons or partners as the voting representative for such Dwelling Unit, which shall remain in effect until such appointed representative relinquishes such appointment in writing, becomes incompetent, dies, or such appointment is otherwise rescinded by order of a court of competent jurisdiction. Such appointed voting representative may grant a proxy to another to vote in his place at a particular meeting or meetings pursuant to paragraph (d) of this Section 2.05, which shall constitute relinquishment of his right to act as voting representative for the Dwelling Unit at such meeting or meetings.

(c) **Voting by Corporation or Trust.** Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustees may cast the vote on behalf of the trust, and the agent or other representative of the corporation duly empowered by the board of directors of such corporation shall cast the vote to which the corporation is entitled.

(d) **Proxy.** An Owner may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Owner shall duly designate his attorney-in-fact in writing, delivered to an officer of the Association prior to the commencement of the meeting.

(e) **Quorum.** Except where otherwise expressly provided in the Declaration, these By-laws, or the Act, the presence of Owners or their duly authorized representatives holding fifty-one percent (51%) of the total Percentage Vote shall constitute a quorum at all meetings. The terms "majority of Owners" and "majority of the Percentage Vote", as used in these By-laws, shall mean, unless otherwise expressly indicated, more than fifty percent (50%) of the total Percentage Vote as determined by the applicable provisions set forth in the Declaration, and shall not mean a majority of the persons or votes present or represented at such meeting.

(f) **Conduct of Meeting.** The Chairman of the meeting shall be the President of the Association. He shall call the meeting to order at the duly designated time, and business will be conducted in the following order:

(1) **Reading of Minutes.** The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto.

(2) **Treasurer's Report.** The Treasurer shall report to the Co-Owners concerning the financial condition of the Association and answer relevant questions of the Owners concerning the Common Expenses and financial report for the prior year and the proposed budget for the current year.

(3) **Budget.** The proposed budget for the current fiscal year shall be presented to the Co-Owners for approval or amendment.

(4) **Election of Board of Directors.** Nominations for the Board of Directors may be made by an Owner from those persons eligible to serve. Such nominations must be in writing and presented to the Secretary of the Association at least ten (10) days prior to the annual meeting. Voting for Board of Directors will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a Board member. Each Owner may cast his Percentage Vote for each of as many nominees as are to be elected.

however, he shall not be entitled to accumulate his votes. Those persons receiving the highest number of votes shall be elected.

(5) Other Business. Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Association at least ten (10) days prior to the date of the meeting; provided, however, that such written request may be waived at the meeting if agreed by a majority of the vote.

(6) Committee Reports. Reports of committees designated to supervise and advise on the respective segments of maintenance and operations assigned by the Board of Directors shall be presented.

(7) Adjournment. Upon completion of all business before the Association, the President, upon the motion of any Owner, may adjourn the meeting; provided, however, that no annual meeting shall be adjourned until a budget is approved by the Co-Owners for the upcoming year.

Section 2.06. Control During Development. Notwithstanding any other provision of the Declaration, the Act, or these By-laws, from and after the date of the Declaration until the date when Declarant turns over control of the Regime to the Co-Owners, as determined by Declarant within the limitations set forth in Section 8 of the Declaration, the Regime shall be governed by the Initial Board of Directors appointed by Declarant. Said Initial Board of Directors shall exclusively hold all rights and powers which a Board of Directors or the Association would have under the Declaration, the Act, or these Bylaws, except as specifically limited in this Section 2.06. Said Initial Board of Directors may appoint from time to time from among the Co-Owners committees to advise and assist it in the performance of its functions. The rights and powers of said Initial Board of Directors shall be limited as follows:

(a) The power of assessment shall be limited in that the total monthly assessments in any month against any Dwelling Unit during the first year after the date of the Declaration shall not exceed Seventy-eight and 69/100 Dollars, (\$ 78.69), and said amount shall not be increased in any subsequent year prior to turnover of control of the Association by Declarant by more than twelve percent (12%) over the assessment in the preceding year.

(b) Said Initial Board shall have no power to reallocate Percentage Interests or Percentage Votes in a manner not consistent with the Formula (except for rounding to meet the 100% total requirement).

(c) Said Initial Board, as such, shall have no power to determine on behalf of the Co-Owners whether a complete destruction of the Buildings and other Property within the Regime has occurred, and the Co-Owners shall be entitled to vote on such matter in accordance with Section 19 of the Declaration, provided, however, that this shall not prohibit Declarant from voting on such matter according to the Percentage Vote attaching to the Dwelling Units owned by Declarant.

(d) Said Initial Board of Directors shall not take any action requiring the vote or consent of any Mortgagee unless the vote or consent of such Mortgagee is obtained.

Declarant shall have the right to waive, on behalf of the Association, the annual meetings and annual accountings provided for in this Article II and in the Declaration, so long as Declarant retains control of the Association. At the time of turnover of control by Declarant, the first annual meeting of the Association will be called, at which time the rights and powers of the Initial Board of Directors shall terminate and the Regime shall thereafter be governed in accordance with the provisions of the Declaration, the Act, and these By-laws other than this Section 2.06.

ARTICLE III

Board of Directors

Section 3.01. The affairs of the Association shall be governed and managed by the Board of Directors (herein sometimes collectively called "Board" and individually called "Directors"). The Initial Board of Directors shall be composed of three (3) persons appointed by Declarant. After the expiration of the term of the Initial Board of Directors as provided in Section 2.06 hereinaabove, the constituency of such Board shall

increased to, but shall not exceed, seven (7). The number of Directors shall be increased in accordance with this Section 3.01 only if the increase is properly brought before the Association at an annual meeting or special meeting called for such purpose and approved by a majority of the Percentage Vote. No person shall be eligible to serve as a Director unless he or she is an Owner or is an attorney, agent, or employee of Declarant.

Section 3.02. Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then the person entitled to cast the Percentage Vote on behalf of such multiple Owner shall be eligible to serve on the Board of Directors.

Section 3.03. Term of Office and Vacancy. The Board of Directors shall be elected at each annual meeting of the Association subject to the limitations set forth in Section 2.06 above. Any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Directors or by vote of the Co-Owners if a Director is removed in accordance with Section 3.04 of this Article III. Directors shall serve until the next annual meeting or until their successors are duly elected and qualified.

Section 3.04. Removal of Directors. After the tenure of the initial Board of Directors has expired, a Director or Directors may be removed with or without cause by a majority of the vote at a special meeting of the Co-Owners duly called and constituted. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director selected shall serve until the next annual meeting of the Co-Owners or until his successor is duly elected and qualified.

Section 3.05. Duties of the Board of Directors. The Board of Directors shall perform or cause to be performed, when and to the extent deemed necessary or appropriate in the Board's business judgment, the following:

- (a) Repair and replacement of the Common Areas and Limited Areas;
- (b) Procuring of utilities, removal of garbage and waste, and snow removal from the Common Areas;
- (c) Landscaping, painting, decorating, and furnishing of the Common Areas and Limited Areas, the exterior of the Buildings, garages and walls;
- (d) Surfacing, paving, and maintaining streets, parking areas, garages, and sidewalks, and the regulation of the use thereof;
- (e) Assessment and collection from the Owners of the Owner's pro-rata share of the Common Expenses.
- (f) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
- (g) Preparing and delivering annually to the Co-Owners a full accounting of all receipts and expenses incurred during each year, which accounting shall be delivered to each Owner simultaneously with delivery of the annual budget;
- (h) Keeping a current, accurate, and detailed record of receipts and expenditures affecting the Property, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours.
- (i) Procuring and maintaining in force all insurance coverage required by the Declaration to be maintained for the whole Regime as specified by Section 18 of the Declaration.

Section 3.06. Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonably necessary or appropriate to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (a) To employ a professional managing agent or real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board in performing its duties;

(b) To purchase for the benefit of the Co-Owners such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;

(c) To procure for the benefit of the Owners fire and extended coverage insurance covering the Buildings and the Property to the full insurable value thereof, to procure public liability and property damage insurance and Workmen's Compensation Insurance, if necessary, and to procure all such other insurance as is required or permitted under the Declaration, for the benefit of the Owners, the Association, and the Mortgagees;

(d) To employ legal counsel, architects, contractors, accountants, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;

(e) To include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

(f) To open and maintain a bank account or accounts in the name of the Association; and

(g) To adopt, revise, amend, and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation, and enjoyment of the Property; provided that the Board shall give written notice to the Co-Owners of such rules and any revision, amendment, or alteration thereof.

Section 3.07. Limitations on Board Action. After the tenure of the Initial Board of Directors, the authority of the Board of Directors to enter into contract shall be limited to contracts involving a total expenditure of less than Five Thousand Dollars (\$5,000.00), unless the prior approval of a majority of Owners is obtained, except in the following cases:

(a) Supervision and management of the replacement or restoration of any portion of the Common Areas damaged or destroyed by fire or other casualty, where the cost thereof is payable out of insurance proceeds actually received; and,

(b) Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Co-Owners at the annual meeting.

The said \$5,000.00 maximum shall be adjusted every five (5) years from the date of this Declaration to reflect changes in the purchasing power of the U.S. Dollar, as determined by the most recently published annual GNP Implicit Price Deflator or any comparable successor index.

Section 3.08. Compensation. No Director shall receive any compensation for his or her services as such except to such extent as may be expressly authorized by a majority of the Owners.

Section 3.09. Meeting Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of Directors. The Secretary shall give notice of regular meetings of the Board to each Director personally or by United States mail at least five (5) days prior to the date of such meetings. At any time after the tenure of the Initial Board of Directors has expired, a special meeting of the Board may be called by the President or any two members of the Board. The person or persons calling such meeting shall give written notice thereof to the Secretary, who shall either personally or by mail and at least three (3) days prior to the date of such special meeting, give notice to the Board members. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place as shall be designated in the notice.

Section 3.10. Waiver of Notice. Before any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting shall, as to such Director, constitute a waiver of notice of the time, place, and purpose thereof. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Officers

Section 4.01. Officers of the Association. The principal officers of the Association shall be the President, Vice-President, Secretary and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

Section 4.02. Election of Officers. The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each election thereof. Upon recommendation of a majority of all members of the Board and upon an affirmative vote of a majority of all Owners, any officer may be removed either with or without cause and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 4.03. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Association. After the tenure of the Initial Board of Directors, he shall preside at all meetings of the Association and of the Board, shall have and discharge all the general powers and duties usually vested in the office of the president or chief executive officer of an association or a stock corporation organized under the laws of Indiana, including, but not limited to, the power to appoint committees from among the Co-Owners as he may deem necessary to assist in the affairs of the Association and to perform such other duties as the Board may from time to time prescribe.

Section 4.04. The Vice-President. The Vice-President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice-President shall also perform such other duties as these By-laws may prescribe or as shall, from time to time, be imposed upon him by the Board or by the President.

Section 4.05. The Secretary. The Secretary shall be elected from among the Owners or Directors. The Secretary shall attend all meetings of the Association and of the Board and shall keep or cause to be kept a true and complete record of proceedings of such meetings, shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association or the Board are duly given, mailed or delivered, in accordance with the provisions of these By-laws.

Section 4.06. The Treasurer. The Board shall elect from among the Owners or Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association and such other duties incident to the office of Treasurer. He shall be legal custodian of all monies, notes, securities, and other valuables which may from time to time come into possession of the Association. He shall immediately deposit all funds of the Association coming into his hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name and for the exclusive benefit of the Association.

Section 4.07. Assistant Officers. The Board of Directors may from time to time designate and elect from among the Co-Owners an Assistant Secretary and Assistant Treasurer, who shall have such powers and duties as the Officers whom they are elected to assist shall delegate to them and such other powers and duties as these By-laws or the Board of Directors may prescribe.

ARTICLE V

Additional Rights and Duties of Board

Section 5.01. Right of Entry. An Owner or occupant of a Dwelling Unit shall be deemed to have granted the right of entry to his Dwelling Unit to the Board, the Managing Agent, or any person authorized by the Board in case of any emergency, in order to remedy any circumstance threatening his Dwelling Unit, the Building in which it is located, or any person, whether the Owner is present at the time or not. Any Owner shall permit persons authorized by the Board to perform any work, when required, to enter his Dwelling Unit for the purpose of performing installations, alterations, or repairs

to the mechanical or electrical facilities or equipment, or to make structural repairs, provided that requests for entry are made in advance and that such entry is at a time convenient to the Owner. In case of emergencies, such right of entry shall be immediate.

Section 5.02. Right of Board to Adopt Rules and Regulations. The Board may promulgate such reasonable rules and regulations regarding the operation of the Property as the Board may deem desirable, including but not limited to the use of the General Common Areas and Limited Areas. Such rules as are adopted may be repealed or amended by a vote of a majority of the Board. The Board shall cause copies of all such rules and regulations, including any amendments or repeals thereof, to be delivered or mailed promptly to all Owners at least fifteen (15) days prior to the effective date thereof. Any rule or regulation promulgated by the Board shall be properly and consistently enforced by the Board.

ARTICLE VI

Procedures for Assessments

Section 6.01. Annual Accounting. Annually, after the close of each fiscal year and prior to the date for notice of the annual meeting of the Association, the Board of Directors shall cause to be prepared and furnished to each Owner an audited financial statement by an Independent Certified Public Accountant, which statement shall show all receipts and expenses received, incurred, and paid by the Association during the preceding fiscal year. The fiscal year of the Association shall be July 1 to June 30.

Section 6.02. Proposed Annual Budget. Annually, on or before the date for notice of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing fiscal year estimating the total amount of the Common Expenses for the ensuing year, and furnish a copy of such proposed budget to each Owner prior to the annual meeting. The proposed annual budget shall be submitted to the Co-Owners at the annual meeting of the Association for adoption, and if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the ensuing fiscal year. At the annual meeting of the Co-Owners, the proposed annual budget may be approved in whole or in part, or may be amended in whole or in part, by a majority of the vote present or represented at the meeting (provided a quorum is present); provided, however, that in no event shall the annual meeting of the Co-Owners be adjourned until an annual budget is approved at such meeting.

Section 6.03. Regular Assessments. The annual budget as adopted shall, based on the estimated cash requirement for the Common Expenses in the ensuing fiscal year as set forth in said budget, contain a proposed assessment against each Dwelling not based on the Percentage Interest of each Dwelling Unit times the total amount of said budget (herein called the "Regular Assessment"). The Regular Assessment against each Unit shall be paid in twelve (12) equal monthly installments, commencing on the first day of the calendar month immediately following adoption and continuing on the first day of each calendar month thereafter. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, that any Owner may elect to pay monthly Assessments in advance. The Regular Assessment for each year shall become a lien on each separate Dwelling Unit as of the date of the adoption of the annual budget. Prior to Declarant's turning over of control of the Association, the Co-Owners shall bear the Common Expenses of the Regime through payment of an Initial Assessment fixed from time to time by the initial Board of Directors. During the first year following the date of the Declaration, the amount payable per month for the Initial Assessment is fixed at Seventy-eight and 00/100 Dollars (\$ 78.00) for the largest unit (with appropriate downward adjustment for smaller units on pro-rata basis in accordance with the Declaration). Each year thereafter, such Initial Assessment may not be increased more than twelve percent (12%) during each succeeding year in which Declarant controls the Association. Declarant shall be entitled to pay its Regular Assessments in lump sums for all Dwelling Units owned by it (if and when subject to assessments in accordance with the provisions hereof and of the Declaration) and may elect to pay the same in quarterly or semi-annual installments in advance during the calendar year. The Declarant shall be responsible for any deficits during the period in which it controls the Association, and Declarant shall also establish and maintain during such period a reserve fund from Owner's deposits required in Section 6.07 below for replacement or major repair of Common Areas which is based upon its good faith estimates replacement costs and useful life of such Common Areas. After the turning over of control of the Association to the Co-Owners, each Dwelling Unit Owner shall pay to the Association a Regular Assessment based on the Percentage Interest for each

Dwelling Unit for payment of the regular Common Expenses provided for in the annual budget, including expenses for maintenance and repair of the Common Areas, necessary insurance costs, reserve funds for replacements and maintenance, costs of operation of the community activities and facilities of the Association, and for any other necessary or appropriate expenses for maintenance and operation of the Regime.

Section 6.04. Special Assessments. In addition to the Assessments authorized above, the Association may levy such special Assessments as may be necessary for the purpose of defraying, in whole or in part: (1) the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, and (2) the expense of any other contingencies or events not provided for in the annual budget or the reserves and working capital of the Association; provided that no special Assessments shall be levied without the assent of a majority of the Percentage Vote at a meeting duly called for this purpose. Each Owner shall pay to the Association a special Assessment based on his Percentage Interest times total sum approved to meet the costs and expenses as heretofore provided. The Association may, in connection with the levy of any special Assessment, specify that the same shall be payable in installments and specify the due dates thereof.

Section 6.05. Adjustments. In the event that the approved budget and Regular Assessments plus the reserves and working capital of the Association prove insufficient to meet the Association's actual expenses in any year, such deficiencies may be corrected through one or more special Assessments. In the event the approved and Regular Assessments exceed actual expenses in any year, such surplus shall be retained and used to offset expenses in the next year(s) or returned to the Co-Owners in proportion to their Percentage Interests, as the Board of Directors shall elect.

Section 6.06. Temporary Budget and Assessments. If for any reason an annual budget and the annual Assessments for any year have not been determined as of the beginning of such fiscal year, the budget and Assessments in effect during the preceding year shall continue in effect until such time as the annual budget and annual Assessments are determined in accordance with the Declaration and these By-laws, provided, however, that said preceding budget and Assessments may be increased by up to fifteen percent (15%) as the Board of Directors may deem necessary in said temporary budget and Assessments.

Section 6.07. Reserve and Working Capital Funds. The Association shall be obligated to establish a reserve fund for the repair and replacement of those Common Areas that must be replaced periodically, based upon good faith estimates of the useful lives and replacement costs of such Common Areas made or obtained by the Association. The reserve fund shall be funded through the payments by the Owners of Common Expenses and not by an extraordinary or special assessment. Extraordinary expenditures not originally included in the annual estimate that become necessary during the year shall be charged first against the reserve fund so established before any special Assessment is made or levied therefor. In addition to the reserve fund, a working capital fund shall be established and maintained by the Association. At the closing of the initial sale of each Dwelling Unit to an Owner, the purchaser of such Dwelling Unit shall deposit with the Association an amount equal to two months' installments of the Regular Assessment in effect at the time of such sale for Common Expenses for such Dwelling Unit, which amount shall be retained by the Association as working capital. Thereafter, the Board of Directors may, upon proper approval of any annual meeting, require all Owners to increase the deposit with the Association to an amount at least equal to one-sixth (1/6) of the Regular Assessment for Common Expenses for his Dwelling Unit for the current fiscal year if the Board feels such increase is necessary to adequately fund such reserve. Amounts paid or deposited into the working capital fund shall not relieve an Owner from this responsibility for the Regular Assessments due in accordance with this Article VI. All amounts held by the Association pursuant to this Section 6.07 shall be maintained in a federally-insured, interest-bearing account in a bank or savings and loan association doing business in Monroe County, Indiana, and all interest thereon shall be added to and deemed a part of such fund. Notwithstanding anything contained herein to the contrary, the Declarant shall not be required to maintain on deposit with the Association the contribution to the working capital fund described in this Section 6.07, provided, however, that the Declarant shall be obligated to immediately make up any deficiency resulting from the excess of the Declarant's proportionate share of actual Common Expenses over the Declarant's Regular Assessments.

Section 6.08. Status of Funds Collected by Association. All funds collected pursuant to this Article VI shall be held and expended by the Association solely for the purposes designated herein, and, except for any special Assessments that may be levied

hereunder against less than all of the Owners, and except for such adjustments as may be required to reflect delinquent or prepaid assessments, shall be deemed to be held for the use, benefit, and account of all of the Owners for the payment of Common Expenses in accordance with the Owners' respective Percentage Interests.

ARTICLE VII

Amendment to By-Laws

These By-laws may be amended by Declarant in the same manner and to the same extent as the Declaration; in addition, these By-laws may be amended by a majority of the Percentage Vote of the Co-Owners in a duly constituted meeting called for such purpose, except that the right of amendment is exclusively reserved to the Initial Board of Directors during the period set out in Section 2.06 above, and except as prohibited by any provision of the Declaration, the Act, or these By-laws, as the same may be amended from time to time.

ARTICLE VIII

Notices and Mortgages

Section 8.01. Notice to Association. Any Owner who places a first mortgage lien upon his Dwelling Unit or the Mortgagee thereof shall notify the Secretary of the Association and provide the name and address of the Mortgagee. A record of such Mortgagee and name required to be given to the Mortgagee pursuant to the terms of the Declaration or these By-laws shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgages and the name and address of the Mortgagee are furnished to the Secretary, either by Owner or by the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Declaration or these By-laws shall be required, and no Mortgagee shall be entitled to vote on any matter on which he otherwise may be entitled to vote by virtue of the Declaration or By-laws or proxy granted to such Mortgagee in connection with the mortgage.

Section 8.02. Notice of Assessments. Upon ten (10) days written notice to the Association and the payment of a reasonable fee, the Association shall deliver to any Owner, Mortgagee, prospective Mortgagee, title insurance company, purchaser or other prospective transferee of a Dwelling Unit, a written statement setting forth the amount of all unpaid assessments, if any, with respect to the subject Dwelling Unit, together with the amount of the current assessments for Common Expenses and the date(s) such assessments become due and payable. Any such written statement shall be binding upon the Association in favor of any person relying thereon in good faith.

Section 8.03. Financial Statements. The Association, upon the request of any Mortgagee, shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Association pursuant to Section 5.02 of these By-laws.

Section 8.04. Notices to Mortgagees. The Association shall promptly provide to any Mortgagee of whom the Association has been provided notice under Section 8.01 of these By-laws of any of the following:

- (a) Any condemnation or casualty loss that affects either a material portion of the Regime or the Dwelling Unit securing its mortgage;
- (b) Any delinquency in the payment of Regular or Special Assessments owed by the Owner of any Dwelling Unit on which said holder, insurer, or guarantor holds a mortgage, if said delinquency continues for more than sixty (60) days;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and,
- (d) Any proposed action that requires the consent of a specified percentage of Mortgagees.

Section 8.05. Availability of Information. The Association shall keep and shall make available to prospective purchasers of Dwelling Units, upon request at reasonable business hours, copies of the Declaration, By-laws, current rules and regulations, if any, and the most recent financial statement of the Association.

CERTIFICATION

The undersigned, being first duly Sworn, hereby certifies that the within and foregoing Code of By-laws of Bay Pointe Co-Owners Association, Inc. are true and

[Handwritten Signature], Declarant
(Name)
Max R. Kanbell

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

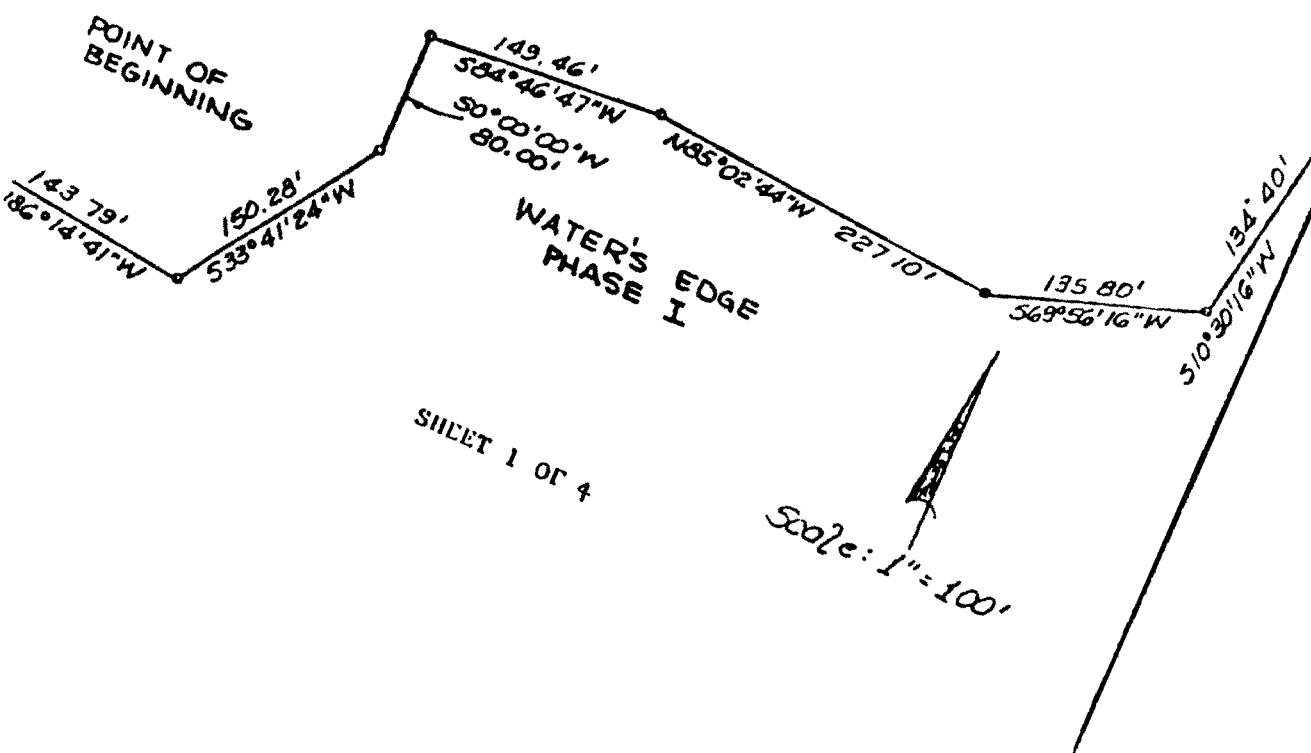
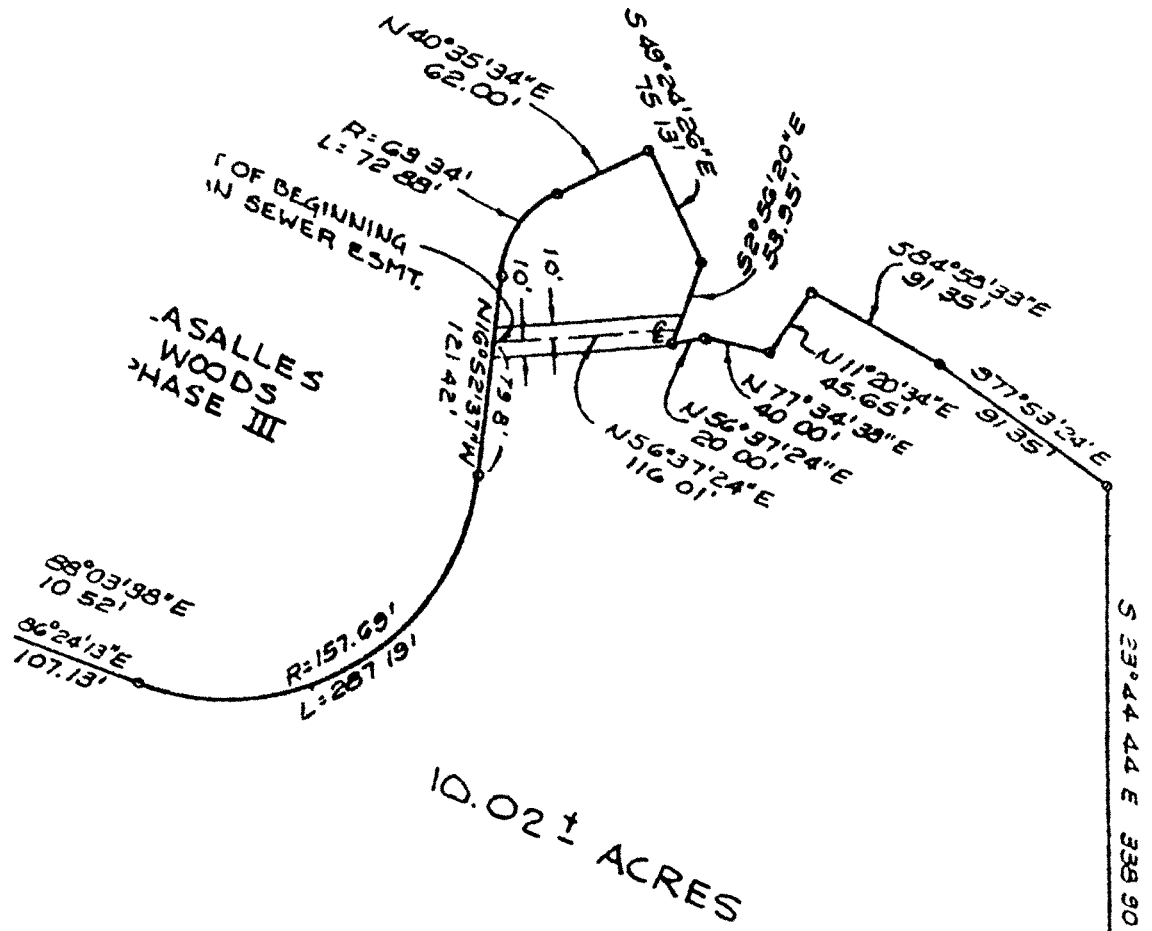
Subscribed and sworn to before me, a Notary Public, in and for the County of Marion State of Indiana on this 22 day of October, 1986.

Signature: [Handwritten Signature]
Printed: Robin R
NOTARY PUBLIC



Commission Expires:
-17-90

Resident of MONROE County



SHEET 1 OF 4

Scale: 1" = 100'

374.27 feet to the boundary line of Monroe Reservoir, being on the U.S. Government Fee Line as shown on drawings on file in the Office of the District Engineer, Corps of Engineers, Louisville, Kentucky; thence the next five (5) courses being along said boundary line of Monroe Reservoir; (1) SOUTH 17 degrees 46 minutes 16 seconds WEST 179.67 feet; (2) SOUTH 3 degrees 01 minute 44 seconds EAST 94.60 feet; (3) SOUTH 61 degrees 38 minutes 44 seconds EAST 125.40 feet; (4) SOUTH 65 degrees 34 minutes 16 seconds WEST 75.90 feet; (5) SOUTH 36 degrees 06 minutes 16 seconds WEST 134.50 feet; thence SOUTH 81 degrees 08 minutes 58 seconds EAST 183.92 feet to the Southwest corner of the Woodbridge Expansion Area designated Exhibit "P" in Miscellaneous Book 103, pages 334-442 in the Office of the Recorder of said County; thence the next two (2) courses being along said southerly line of Woodbridge Expansion Area (1) SOUTH 88 degrees 22 minutes 37 seconds EAST 300.00 feet, (2) SOUTH 67 degrees 26 minutes 02 seconds EAST 129.00 feet to the southerly line of Parcel VI of the Golf Course as recorded in Deed Record 292, page 470 in the Office of the Recorder of said County, thence the next two (2) courses being along said southerly line of Parcel VI; (1) SOUTH 33 degrees 23 minutes 43 seconds EAST 161.70 feet; (2) NORTH 74 degrees 51 minutes 22 seconds EAST 225.84 feet; thence SOUTH 88 degrees 13 minutes 33 seconds WEST 60.00 feet; thence NORTH 1 degree 46 minutes 27 seconds WEST 58.55 feet to the point of beginning; thence NORTH 1 degree 46 minutes 27 seconds WEST 490.48 feet; thence NORTH 88 degrees 03 minutes 38 seconds EAST 10.52 feet; thence NORTH 86 degrees 24 minutes 13 seconds EAST 107.13 feet to the point of curvature of a tangent curve, the radius point of said curve bears NORTH 2 degrees 31 minutes 54 seconds WEST 157.69 feet from said point of curvature, said curve having a central angle of 104 degrees 20 minutes 43 seconds; thence northerly along said curve 287.19 feet; thence NORTH 16 degrees 52 minutes 37 seconds WEST 121.42 feet to the point of curvature of a tangent curve, the radius point of said curve bears NORTH 64 degrees 39 minutes 50 seconds EAST 63.34 feet from the said point of curvature, said curve having a central angle of 65 degrees 55 minutes 44 seconds; thence northeasterly along said curve 72.88 feet; thence NORTH 40 degrees 35 minutes 34 seconds EAST 62.00 feet; thence SOUTH 49 degrees 24 minutes 26 seconds EAST 75.13 feet; thence SOUTH 2 degrees 56 minutes 20 seconds EAST 53.95 feet; thence NORTH 56 degrees 37 minutes 24 seconds EAST 20.00 feet; thence NORTH 77 degrees 34 minutes 38 seconds EAST 40.00 feet; thence NORTH 11 degrees 20 minutes 34 seconds EAST 45.65 feet; thence SOUTH 84 degrees 58 minutes 33 seconds EAST 91.35 feet; thence SOUTH 77 degrees 53 minutes 24 seconds EAST 126.13 feet; thence SOUTH 23 degrees 44 minutes 44 seconds EAST 338.90 feet; thence SOUTH 5 degrees 40 minutes 44 seconds EAST 181.50 feet; thence SOUTH 10 degrees 30 minutes 16 seconds WEST 134.40 feet; thence SOUTH 69 degrees 56 minutes 16 seconds WEST 135.80 feet; thence NORTH 85 degrees 02 minutes 44 seconds WEST 227.10 feet; thence SOUTH 84 degrees 46 minutes 47 seconds WEST 149.46 feet; thence SOUTH 0 degree 00 minutes 00 seconds WEST 80.00 feet; thence

EXHIBIT "C"

97, 171 N. 88

BAY POINTE SECTION ONE

<u>Unit Designation</u>		<u>Floor</u>	<u>Square</u>	<u>Percentage</u>	<u>Address</u>
<u>Bldg.</u>	<u>Unit</u>	<u>Plan</u>	<u>Footage</u>	<u>Interest</u>	
1	A-1	2BR	1,030	9.63	9704 S. Bay Pointe Ln.
1	C-2	1BR	704	6.58	9708 S. Bay Pointe Ln.
1	A-3	2BR	1,030	9.63	9712 S. Bay Pointe Ln.
1	B-4	2BR	1,200	11.24	9716 S. Bay Pointe Ln.
1	B-5	2BR	1,200	11.24	9720 S. Bay Pointe Ln.
1	A-6	2BR	1,030	9.63	9724 S. Bay Pointe Ln.
1	C-7	1BR	704	6.58	9728 S. Bay Pointe Ln.
1	A-8	2BR	1,030	9.63	9732 S. Bay Pointe Ln.
1	A-9	2BR	1,030	9.63	9736 S. Bay Pointe Ln.
1	C-10	1BR	704	6.58	9740 S. Bay Pointe Ln.
1	A-11	2BR	1,030	9.63	9744 S. Bay Pointe Ln.
		TOTAL	10,692	100.00	