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DECLARATION OF EXPANDABLE CONDOMINIUM

For

POINTE RETREATS PHASE I SECTION I CONDOMINIUM

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## DECLARATION OF EXPANDABLE CONDOMINIUM

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## POINTE RETREATS PHASE I

DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP  
HORIZONTAL PROPERTY REGIME

THIS DECLARATION, and the exhibits which are attached hereto and made a part hereof, are made and executed this 11<sup>th</sup> day of December, 1984, by RONALD J. KILLION, hereinafter called the "Declarant", for himself, his successors, grantees and assigns, pursuant to the provisions of the Indiana Horizontal Property Act.

WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property in Monroe County, State of Indiana, more particularly described and defined in Exhibit A attached hereto and made a part hereof which shall constitute the Pointe Retreats condominium development; and

WHEREAS, the Declarant is the owner of additional real property described in Exhibit F, attached hereto, which shall, at the election of Declarant and upon annexation of such additional real property, constitute a part of Pointe Retreats condominium development; and

WHEREAS, the Declarant is the owner of certain condominium type multi-unit buildings and certain other improvements heretofore constructed or hereafter to be constructed upon the aforesaid property and it is the desire and the intention of the Declarant to divide the project into "Condominium Units" or "Condominiums" as those terms are defined under the provisions of the Indiana Horizontal Property Act, and to sell and convey the same to various purchasers subject to the covenants, conditions and restrictions herein reserved to be kept and observed; and

WHEREAS, Declarant desires and intends, by the filing of this Declaration, to submit the Property described in Exhibit A and the multi-unit buildings located thereon and all other improvements constructed or to be constructed thereon, together with all appurtenances thereto, to the provisions of the Indiana Horizontal Property Act; and

WHEREAS, the Declarant reserves the right to annex all or any part of said additional real property described in Exhibit F, attached hereto, upon execution and recordation of an amended declaration by Declarant which, upon execution and recordation shall automatically include the land described therein within this Declaration and such action shall require no approvals or other action by either the unit owners or the Board of Administrators or the members of the Pointe Retreats Homeowners Association or by any other person or entity, as hereinafter more particularly provided;

NOW, THEREFORE, the Declarant by execution of this Declaration does hereby create an Expandable Horizontal Property Regime subject to the provisions of the Indiana Horizontal Property Act and the terms and conditions hereof, and does hereby publish and declare that all of the Property described in Exhibit A (and as described in paragraph 4 below) is held and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of said Property and the division thereof into Condominium Units and shall be deemed to run with the land and shall be a burden and benefit to Declarant, its successors and assigns, and any person, firm, corporation or other entity acquiring and owning an interest in the Property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

#### 1. Definitions.

Certain terms as used in this Declaration and Exhibits attached hereto and made a part hereof shall be defined as follows, unless the context clearly indicates a meaning different therefor:

(a) "Act" shall mean the Horizontal Property Act of the State of Indiana, Act of 1963, Chapter 349, Sections 1 through 41, as amended. The Act is incorporated herein by reference.

(b) "Homeowners Association" is as defined in the Indiana Horizontal Property Act and shall mean all of the Unit Owners acting as a group in accordance with the Declaration and By-Laws.

(c) "Board of Administrators" shall mean the governing body of the Homeowners Association, elected pursuant to the By-Laws and shall be synonymous with "Board of Directors" as used in the Act.

(d) "Buildings" shall mean all structures erected or to be erected upon the Property.

(e) "By-Laws" shall mean the by-laws for the administration of the Property and the Homeowners Association contained in Exhibit B attached hereto and made a part hereof.

(f) "Common Areas and Facilities" shall have the meaning as set forth in the Indiana Horizontal Property Act and as more fully described in paragraph 8 hereof.

(g) "Common Expenses" shall mean and include:

(i) all sums assessed against the Unit Owners by the Homeowners Association;

(ii) expenses of administration, maintenance, repair or



(iii) expenses agreed upon as Common Expenses by the Homeowners Association; and

(iv) expenses declared to be Common Expenses by the provisions of the Indiana Horizontal Property Act, or by this Declaration or the By-Laws.

(h) "Common Expense Fund" shall mean the separate accounts to be kept in accordance with the provisions of Article VII, Section 2 of the By-Laws.

(i) "Common Interest" shall mean the aggregate of the undivided interests of the Unit Owners in the Common Areas and Facilities.

(j) "Condominium" shall mean the entire estate in the Property owned by the Owner, including an undivided interest in the Common Areas and Facilities and ownership of a separate interest in a Unit.

(k) "Condominium Documents" shall mean this Declaration and all of the Exhibits hereto as the same shall from time to time be amended. Said Exhibits are as follows:

Exhibit A -- Legal Description of the Property;

Exhibit B -- By-Laws of the Homeowners Association;

Exhibit C -- Master Site Plan;

Exhibit D -- Plans and Specifications;

Exhibit E -- Unit Designations;

Exhibit F -- Legal Description of Expansion Area

Exhibit G -- Supplemental Declaration of Time Share Ownership Covenants, Conditions and Restrictions

(l) "Owner" or "Unit Owner" shall mean a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, having an ownership interest of record in a Unit within the Property.

(m) "Limited Common Areas and Facilities" shall mean those parts of the Common Areas and Facilities reserved for the use of a certain Unit or Units to the exclusion of all other Units and more specifically described in paragraph 10 hereof.

(n) "Mortgage" shall mean a deed of trust as well as a mortgage.

(o) "Mortgagee" shall mean a beneficiary under or a holder of a deed of trust as well as a mortgage.

(p) "Property" or "Condominium Property" shall mean the entire parcel of real property referred to in this Declaration to be divided into Condominiums (and more fully described in Exhibit A) including the land, the Buildings, all improvements and structures thereon, all owned in fee simple absolute, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for common use in connection therewith.

(q) "Unit" shall mean "Apartment" as defined in the Act and shall mean those parts of the Condominium Property described in paragraph 6 hereof which are the subject of individual ownership. The term "Unit" as used herein and in the By-Laws shall be synonymous with the term "Apartment" as used in the Act.

2. Declaration.

Declarant hereby expressly declares that the Property described herein shall be an Expandable Horizontal Property Regime in accordance with the provisions of the Act and this Declaration.

3. Name of the Condominium.

The name by which the Condominium Property shall be known is "Pointe Retreats".

4. General Description of the Property.

The Condominium Property consists of the real property described and identified on Exhibit A attached hereto and made a part hereof and the Buildings and other improvements erected and to be erected thereon and all articles of personal property intended for common use in connection therewith.

5. Description of Buildings.

Pointe Retreats will consist of two (2) non-contiguous multi-unit residential buildings. The Buildings are designated on the Master Site Plan, a copy of which is attached hereto and made a part hereof as Exhibit C, which such Master Site Plan further shows the location of each Building on the real property described in Exhibit A and its location with respect to every other Building thereon. The two (2) Buildings contain a total of twenty-four (24) separate Units consisting of one (1) basic one bedroom, 460 square foot floor plan type ("1F").

The number of stories in each Building, the number of Units and basements are as follows:

<u>Building Designation</u>	<u>Number of Units of Type</u>	<u>Total Units in Building</u>	<u>Basement</u>	<u>Stories</u>
A	12 - 1F	12	No	3
B	12 - 1F	12	No	3

Said multi-unit Buildings are more particularly described and defined in the Plans and Specifications of said Buildings, a copy of which Plans and Specifications are attached hereto and made a part hereof as Exhibit D, showing all particulars of the Buildings, including the layout, number of stories, the location, ceiling and floor elevations, Building designations, Unit numbers and dimensions of the Units. Such Plans bear the verified statement of Smith, Quillman and Associates, certifying that said Plans are actual copies of portions of the Plans of the Buildings as filed with and approved by the municipal or other governmental subdivision having jurisdiction over the issuance of permits for the construction of buildings. For a more particular description of the Buildings reference is hereby made to the Plans and Specifications filed herewith as Exhibit D.

#### 6. Description of Units.

(a) The Unit designation of each Condominium Unit, approximate area, number of rooms and other data concerning its proper identification are set forth in Exhibit E attached hereto and made a part hereof. The percentage interests of each Unit in the Common Areas and Facilities owned as tenant-in-common with other Unit Owners shall be based upon the square footage of each Condominium Unit as shown on Exhibit E attached hereto in relationship to the total square footage of all Units as shown on said Exhibit E. Said percentage interests appurtenant to each Unit are as specified on said Exhibit E attached hereto.

(b) Each Unit shall constitute a single freehold estate and shall consist of all of the space bounded by the undecorated and/or unfinished interior surfaces of its perimeter walls, load bearing walls, lowermost floors, uppermost ceilings, windows and window frames, door and door frames. Each Unit includes both portions of the Building within such boundaries and the space so encompassed, including, without limitation, the decorated surfaces, including paint, lacquer, varnish, wallpaper, paneling, tile, carpeting and any other finishing materials applied to interior walls, doors, floors and ceiling and interior surfaces of permanent walls, interior non-load bearing walls, windows, doors, floors and ceiling.

#### 7. Encroachments.

If any portion of the Common Areas and Facilities encroaches upon any Unit, or if any Unit now encroaches upon any other Unit, or upon any portion of the Common Areas and Facilities, as a result of the construction of the Buildings, or if any such encroachment shall occur hereafter as a result of settling or shifting of the Buildings, a valid easement for the encroachment and for the maintenance of same so long as the Buildings stand shall exist. In the event the Buildings, the Unit, any adjoining Unit, or any adjoining Common Area or Facility shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachment of parts of the Common Areas and Facilities upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Areas and Facilities due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Building shall stand.

8. Common Areas and Facilities.

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The Common Areas and Facilities consist of all the Property other than the Units as described in paragraph 6 above, including, without limitation, the following (except such portions of the following, as may be included within an individual Unit):

(a) The land on which the Buildings are erected and all land surrounding the Buildings as more fully described in paragraph 4 above.

(b) All foundations, columns, girders, beams, supports and other structural members.

(c) The yards, landscaping, fences, roads, driveways and exterior parking areas.

(d) All roofs, exterior walls and interior walls except those partitioned walls wholly within a Unit, attics and crawl spaces.

(e) All central and appurtenant installations for services such as power, lights, water, sewer, gas and television; and all tanks, pumps, motors, sewage grinders, fans, cables, antennas, conduits, compressors, flues and ducts (except as described in paragraph 10 below), mechanical systems, storm drains, and all other items used in connection therewith, whether located in Common Areas or in Units.

(f) All exterior walkways.

(g) Maintenance areas and recreational areas including the swimming pool and tennis courts to the extent located now or subsequently within the Property.

(h) All other parts of the Property and all apparatus and installations including all items of personal property existing in the Buildings or upon the Property for common use or which are necessary or convenient to the existence, maintenance or safety of the Property.

Subject to the provisions of paragraph 30 hereof, the percentage of undivided interests in the Common Areas and Facilities as pertaining to each Unit and its Owner for all purposes is as set forth in Exhibit E attached hereto and made a part hereof as if herein set forth in full. Such percentage interest appertaining to each Unit shall be subject to change as is provided in paragraph 30 hereof should Declarant file an amended declaration adding additional Units and real estate to the Expandable Condominium.

9. Use of Common Areas and Facilities.

Each Unit Owner shall have the right to use the Common Areas and Facilities in accordance with the purposes for which they are intended and for all purposes incident to the use and occupancy of his Unit, and such right shall be appurtenant to and run with his Unit; provided, however, that no person shall use the Common Areas and Facilities or any part thereof in such manner as to interfere with or restrict or



impede the use thereof by others entitled to the use thereof or in any manner contrary to or not in accordance with this Declaration, the By-Laws, and such rules and regulations as may be established from time to time by the Board of Administrators. Such rules and regulations may impose reasonable restrictions on the use of such Common Areas and Facilities including, without limitation, assignment of parking spaces to individual Units for their exclusive use.

10. Description of Limited Common Areas and Facilities.

Limited Common Areas and Facilities shall mean and include those Common Areas and Facilities reserved for use by a certain Unit or Units to the exclusion of other Units and shall mean all patios, balconies, chimneys (including duct work and flues), storage rooms and garages. While parking spaces shall not constitute Limited Common Areas and Facilities the Board of Administrators may, in their discretion, from time to time, assign parking spaces to specific Units for their exclusive use. Said Limited Common Areas and Facilities are more fully designated as Exhibit D attached hereto and made a part hereof. References in this Declaration and the By-Laws to Common Areas and Facilities shall include Limited Common Areas and Facilities unless the context clearly indicates otherwise. Each Unit Owner is hereby granted an exclusive and irrevocable license to use and occupy the Limited Common Areas and Facilities associated with and/or assigned to such Owner's Unit.

11. Statement of Purposes, Use and Restrictions.

The Units, Common Areas and Facilities, and Limited Common Areas and Facilities shall be occupied and used as follows:

(a) The Condominium Property shall be used for single family residential purposes and common recreational purposes auxiliary thereto and for no other purposes.

(b) There shall be no obstruction of the Common Areas and Facilities. Nothing may be stored in the Common Areas and Facilities, excluding the Limited Common Areas and Facilities located within the bounds of a Unit or pertaining to a Unit, without the prior written consent of the Board of Administrators.

(c) Nothing shall be done or kept in any Unit or in the Common Areas and Facilities which will increase the rate of insurance on the Common Areas and Facilities without the prior written consent of the Board of Administrators. No Owner shall permit anything to be done or kept in his Unit or in the Common Areas and Facilities which would result in the cancellation of insurance on any Unit or any part of the Common Areas and Facilities, or which would be in violation of any law. No waste will be committed of the Common Areas and Facilities.

(d) No sign of any kind shall be displayed to the public view from any Unit or from the Common Areas and Facilities without the prior written consent of the Board of Administrators.

(e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Areas and Facilities, except that dogs, cats or other usual household pets may be kept in Units, subject to rules and regulations adopted by the Board of Administrators.

(f) No noxious or offensive activity shall be carried on in any Unit, or in the Common Areas and Facilities, nor shall anything be done therein which will be an annoyance or nuisance to other Owners.

(g) Nothing shall be altered or constructed in or removed from the Common Areas and Facilities except upon the written consent of the Board of Administrators and Declarant.

(h) The Board of Administrators of the Homeowners Association is authorized to adopt rules for the use of the Common Areas and Facilities, said rules to be furnished in writing to the Owners. There shall be no violation of said rules.

(i) Notwithstanding anything herein to the contrary, Declarant, and such persons it may select, shall have the right of ingress and egress over, upon and across the Common Areas and Facilities, the right to utilize one or more Condominium Units as a model or office, the right to erect signs upon the Property for the purpose of advertising availability of Units and similar uses, and the right to store materials on the Common Areas and Facilities and make such other use thereof as may be reasonably necessary incident to construction, development and sale of the Condominiums and operation of the Units and Common Areas and Facilities and of other subsequent Phases of Development of which the Property is a part.

## 12. Easements.

(a) General. Each Unit Owner shall have an easement in common with the other Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Facilities located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Facilities serving such other Units and located in such Unit. The Board of Administrators or its agents shall have the right of access to each Unit to inspect the same, to remove violations therefrom and to maintain, repair or replace the Common facilities contained therein or elsewhere in the Buildings.

The Board of Administrators may hereafter grant easements (and shall grant such easements as permitted in this paragraph 12 or as the Declarant shall direct) for utility purposes for the benefit of the Property including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone wires and equipment and electrical conduits, and wires over, under, along, and on any portion of the Common Areas; and each Unit Owner hereby grants the Board of Administrators an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Unit Owner such instruments as may be necessary to effectuate the foregoing.

(b) Cross Easement for Adjoining Property Owners. The Board of Administrators may hereafter grant cross easements for recreational, utility and access purposes for the benefit of the Property, the Unit Owners, and the owners of condominium units located in adjoining or surrounding condominium regimes. All such cross recreational easements and related cross easements for roads, water and sewer shall be subject to approval by Declarant as to the location, form, beneficiary, content and all other particulars.

13. Partitioning.

Neither the Common Areas and Facilities nor any individual Unit shall be divided nor shall any right to partition any thereof exist. Nothing herein contained, however, shall be deemed to prevent ownership of a Condominium Unit by more than one person, either as tenants-by-the-entirety, or tenants-in-common or in any other form by law permitted.

14. Liens.

While the Property remains subject to this Declaration and the provisions of the Act, no liens of any nature shall arise or be created against the Property as a whole or the Common Areas and Facilities except with the unanimous consent in writing of all of the Condominium Unit Owners and the holders of first liens thereon, except for (a) such liens as may arise or be created against the several Units and their respective Common Interests under or in accordance with the provisions of the Act, and (b) the lien of any mortgage given by Declarant to secure financing for the construction of the Buildings and other improvements on the Property. Every agreement for the performance of labor, or the furnishing of materials to the Common Areas and Facilities, whether oral or in writing, must provide that it is subject to the provisions of this Declaration.

15. Nature of Interest in Units.

Every Unit, together with its undivided interest in the Common Areas and Facilities, shall for all purposes be, and it is hereby declared to be and to constitute a separate parcel of real property and the Owner thereof shall be entitled to the exclusive ownership and possession of his Unit subject only to the covenants, restrictions, easements, by-laws, rules, regulations, resolutions and decisions adopted pursuant hereto and as may be contained herein and in the accompanying By-Laws and in the minutes of the Board of Administrators and the Homeowners Association. The percentage of undivided interest in the Common Areas and Facilities of each Unit shall not be separated (subject to the provisions of paragraph 30) from the Unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.



16. Taxes.

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Every Condominium Unit, together with its undivided Common Interest in the Common Areas and Facilities, shall constitute a separate parcel of real property and shall be separately assessed and taxed by each assessing unit for all types of taxes authorized by law. Each Unit Owner shall be liable solely for the amount of taxes against his individual Unit.

17. Homeowners Association.

(a) In order to provide for the maintenance, repair, replacement, administration and operation of the Property there is hereby created an unincorporated association to be known as "Pointe Retreats Homeowners Association". Membership therein shall be composed of all of the Owners of the Units at Pointe Retreats condominium development. Each Owner of a Unit shall be a member of the unincorporated association, but membership shall automatically terminate when such person ceases to be an Owner and will be transferred to the new Owner.

(b) The Pointe Retreats Homeowners Association shall be governed in accordance with and as prescribed by the By-Laws attached hereto.

(c) Declarant, by this Declaration, and all Unit Owners, by the acceptance of their deeds, covenant and agree to be bound by the conditions, restrictions and obligations contained in the By-Laws of Harbour, Pointe Homeowners Association and the provisions of this Declaration.

(d) The duties and powers of the Homeowners Association shall be those set forth in this Declaration and the By-Laws of the Homeowners Association including the power and authority to make assessments as provided for in the By-Laws.

(e) While the Pointe Retreats Homeowners Association is initially organized as an unincorporated association the Declarant reserves the right, so long as Declarant is the Owner of one or more Units in Pointe Retreats condominium development, to incorporate the Pointe Retreats Homeowners Association as an Indiana not-for-profit corporation. In addition, the Homeowners Association, upon affirmative vote of 75% in Common Interest of the Owners, shall have the right to incorporate the Pointe Retreats Phase I Section I Homeowners Association as an Indiana not-for-profit corporation provided, however, that should the Homeowners Association so elect, the Declarant reserves the right to approve the form and content of the articles of incorporation of said not-for-profit corporation.

18. Common Expenses.

Each Unit Owner shall contribute pro rata, in proportion to his undivided interest as set forth in Exhibit E hereto, as the same may be amended from time to time pursuant to paragraph 30 hereof, toward the expenses of administration and of maintenance and repair of the Common Areas and Facilities and any other expense lawfully agreed upon; and shall pay any special assessment duly assessed by the Board of Adminis-

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trators, all in accordance with the By-Laws of the Homeowners Association, this Declaration and the provisions of the Act.

The Condominium Property 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.

#### 19. Insurance.

The Board of Administrators shall obtain and maintain at all times insurance of the type and kind in not less than the amounts provided in this Declaration and the By-Laws and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium properties similar in construction, design and use. Such insurance shall be governed by the following provisions:

(a) The Board of Administrators shall have the authority to and shall obtain insurance policies upon the Condominium Property for the benefit of the Unit Owners and their Mortgagees as their interests may appear, and provision shall be made for the issuance of certificates of mortgagee endorsements to the Mortgagees of the Unit Owners and delivery of said certificates to Mortgagees within 10 days from their original issuance or the issuance of the renewals thereof. The originals of all such policies and the endorsements thereto shall be deposited with the Board of Administrators, as insurance trustees, and certificates of insurance, together with proof of payment of premiums, shall be delivered to the Unit Owners at least 10 days prior to the expiration date with respect to the then current policies. Unit Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their living expenses and such other coverage as they may desire.

(b) The Board of Administrators shall make every effort to secure insurance policies that will provide the following minimum coverages:

(i) Fire. The Buildings and all other improvements upon the land and all personal property included in the Common Areas and Facilities shall be insured in an amount equal to the maximum insurable replacement value as determined annually by the Board of Administrators with the assistance of the insurance company providing coverage. The policies evidencing such coverage shall contain clauses providing for waiver of subrogation, the standard SMP Condominium Endorsement (Form MLB-29A, Ed. 12-72) (excepting the Waiver of Subrogation provision contained therein) and shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to all the insureds, including all Mortgagees or Units. Such coverage shall provide protection against:

(A) Loss or damage by fire or other hazards covered by a standard extended coverage endorsement, and

(B) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the Buildings, including but not limited to vandalism and malicious mischief. All such policies shall provide that adjustment of loss shall be made by the Board of Administrators as insurance trustees.

(ii) Public Liability. The Board of Administrators shall also be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Board of Administrators may, from time to time, determine, covering each member of the Board of Administrators, the managing agent, if any, and each Unit Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Areas and facilities. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the Unit Owners as a group to a single Unit Owner. The Board of Administrators shall review such limits annually. Until the first meeting of the Board of Administrators following the initial meeting of the Unit Owners, such public liability insurance shall be in amounts not less than \$250,000/\$1,000,000 for claims for bodily injury and \$50,000 for claims for property damage. Each Unit Owner, at his own expense, shall keep in force comprehensive personal liability insurance in such amounts as the Board of Administrators shall from time to time determine, but in no case less than \$100,000 for each occurrence.

(iii) Other. Such other insurance coverages including workmen's compensation as the Board of Administrators shall determine from time to time to be desirable.

(c) Premiums upon insurance policies purchased by the Board of Administrators shall be paid by the Board of Administrators and charged as a Common Expense.

(d) The Board of Administrators shall make every effort to secure insurance policies that will provide for the following:

(i) The master policy on the Property cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Owners.

(ii) The master policy on the Property cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Administrators, or manager, without prior demand in writing that the Board of Administrators or manager cure the defect.

(iii) That any "no other insurance" clause in the master policy on the Property exclude individual Owners' policies from consideration.

(e) All insurance policies purchased by the Board of Administrators shall be for the benefit of the Board of Administrators and the Unit Owners and their Mortgagees as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Board as insurance trustee. The sole duty of the Board of Administrators as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein and for the benefit of the Unit Owners and their Mortgagees in the following shares:

(i) With respect to proceeds on account of damage to Common Areas and Facilities, an undivided share for each Unit Owner, such share being the same as each Unit Owner's undivided interest in the Common Areas and Facilities.

(ii) Proceeds on account of damage to Units shall be held in the following undivided shares:

(A) When the Building(s) is to be restored, for the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Administrators.

(B) When the Building(s) is not to be restored, an undivided share for each Unit Owner, such share being the same as his percentage interest in the Common Areas and Facilities.

(iii) In the event a mortgage endorsement has been issued to a Unit, the share of the Unit Owner shall be held in trust for the Mortgagee and the Unit Owner as their interests may appear; provided that no Mortgagee shall have the right to determine or participate in the determination as to whether or not any damaged Property shall be reconstructed or repaired.

## 20. Distribution of Insurance Proceeds.

Proceeds of insurance policies received by the Board of Administrators as insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

(a) All expenses of the insurance trustee shall be first paid or provisions made therefor.

(b) If it is determined, as provided in paragraph 22 hereof, that the damaged Property, with respect to which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Owners thereof.



(c) Any liens or encumbrances affecting any Unit shall be deemed transferred in accordance with the existing priorities to the percentage of undivided interest of the subject Unit Owner in the Condominium Property as hereinabove provided; and

(d) The Condominium Property shall be subject to an action for sale in lieu of partition at the suit of any Unit Owner, in which event the net proceeds of insurance policies, if any, shall be considered as one fund and shall be divided among the Unit Owners in the proportion of their percentage interests in the Common Areas and Facilities previously appurtenant to their Units, after the respective shares of the Unit Owners, to the extent sufficient for that purpose, have first been applied to the payment of all liens on the Unit of each Unit Owner.

The determination of whether the Buildings are "more than two-thirds (2/3) destroyed" for the purpose herein stated shall be determined as follows: An appraisal of the value of all of the Buildings (excluding the land) as of the day immediately preceding the damage shall be obtained from any M.A.I. appraiser by the Board of Administrators. The cost of repairs and restoration shall then be determined by the Board of Administrators by securing not less than three independent bids, in writing, from three reputable building contractors in the community of their proposed charges for making said repairs or restoration, the lowest of which shall be deemed to be the said cost. If the said cost exceeds two-thirds (2/3) of said appraised value, the Buildings shall be deemed more than two-thirds (2/3) destroyed.

23. Power of Attorney to Board of Administrators.

Each Unit Owner shall be deemed to have granted to the persons who shall from time to time constitute the Board of Administrators an irrevocable power of attorney, coupled with an interest, to acquire title to or lease any Unit whose Owner desires to sell or lease the same to the Board of Administrators, or with respect to which said Board has exercised the option to purchase or lease as provided in paragraph 24 hereof, or which may be the subject of a foreclosure or other judicial sale, in the name of the Board of Administrators or its designee, corporate or otherwise, as trustees on behalf of all or less than all Unit Owners, and to hold, convey, sell, lease, mortgage, vote the votes appurtenant thereof or otherwise deal with any such Unit so acquired or to sublease any Unit so leased to the Board of Administrators.

24. Ownership or Lease of Units by Board of Administrators.

Declarant may designate and convey to the Board of Administrators any unsold Unit, and the Board of Administrators may purchase and/or hold such a Unit to be provided as a residence for a managing agent. The cost thereof, if any, and the Common Expenses thereto shall be shared by the remaining Unit Owners in the same proportion as Common Expenses, adjusted, however, to reflect the exclusion of the Unit purchased; and any profit or loss realized upon the sale by the Association of such Unit shall likewise be shared by the remaining Unit Owners.

21. Duty to Repair.

In the event of damage to or destruction of the Building(s) and/or the Common Areas and Facilities as a result of fire or other casualty to the extent of less than two-thirds in value of the Building(s), and the Condominium Property is not partitioned as provided in paragraph 22, the Board of Administrators shall arrange for the prompt repair and restoration of the Building(s) and/or the Common Areas and Facilities (including any damaged Unit, but not including any decoration or coverings for walls, ceilings, or floors, or other furniture, furnishings, fixtures or equipment in the Unit, unless the subject insurance policy covers a portion or all of such loss to the Unit, in which event the Board shall repair or replace such damaged property), and the Board of Administrators shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any cost for such repair and restoration in excess of the insurance proceeds shall be paid by all Owners of Units directly affected by the damage in the same proportion that their respective percentage interest bears to the percentage interest of all such affected owners. A Unit shall be deemed to be affected if and only if such Unit is located within said Building in which the fire or other casualty occurs. If any Owner or Owners refuse or fail to make the required payments, the other Owners shall (or the Association, if such other Owners fail) complete the restoration and pay the costs thereof and the costs attributable to the Owner or Owners who refuse to make such payment at the time required by the Board of Administrators shall become a lien on such defaulting Owner's Unit and may be foreclosed in the same manner as provided for the lien for Common Expenses.

Any reconstruction or repair shall be in accordance with the Plans and Specifications of the original Building(s) and/or Common Areas and Facilities, portions of which are attached to this Declaration as exhibits, or if not, then according to Plans and Specifications approved by the Board of Administrators and Declarant if Declarant is the Owner of one or more Units at such time.

22. Partition.

If the Buildings shall in the aggregate be more than two-thirds (2/3) destroyed by fire or other casualty then restoration thereof must be approved within 120 days from the date of damage or destruction by not less than Unit Owners owning 75% in Common Interest of the Common Areas and Facilities. If such approval is not obtained then, in such event:

(a) The entire Condominium Property shall be deemed to be owned as tenants in common by the Unit Owners;

(b) The undivided interest in the Condominium Property owned by each Unit Owner shall be his percentage interest in the Common Areas and Facilities previously appurtenant to his Unit or Units.

In addition, the Board of Administrators may purchase or lease other Units pursuant to the provisions of the By-Laws and this Declaration. In the event that the Board of Administrators shall purchase and/or hold a Unit as provided hereunder, title to any such Unit, together with all interests appurtenant thereto, shall be held by the Board of Administrators or its designee, corporate or otherwise, as trustees on behalf of all Unit Owners, in proportion to their respective Common Interests or in the event such Unit shall have been acquired on behalf of one or more, but less than all Unit Owners, title shall be held in the proportions as designated by such Unit Owner(s). The lease covering any Unit leased to the Board of Administrators, or its designee, corporate or otherwise, shall be held by the Board of Administrators, or its designee, as trustee on behalf of all Unit Owners, in proportion to their respective Common Interest or, in the event that such Unit shall have been leased on behalf of one or more, but less than all Unit Owners, such lease shall be held in the proportions as designated by such Unit Owner(s).

25. Transfer of Units.

(a) In the event that any person, firm or corporation who owns a Unit shall desire to sell or lease such Unit, then the said Unit which such Owner shall desire to sell or lease shall first be offered for sale or lease to the Board of Administrators at the same price and on the same terms under which the highest acceptable bona fide offer has been made to the Owner of the said Unit. The Owner desiring to sell or lease a Unit shall give the Board of Administrators written notice by registered or certified mail, return receipt requested, of the Owner's desire to sell or lease such Unit or by delivering such notice in person to the President of the Association and shall further advise the Board in said offer of the name and address of the person, firm or corporation making said highest acceptable bona fide offer as well as the amount and terms of said offer and such other information concerning said offeree as the Board shall reasonably request. The giving of such notice shall constitute a warranty or representation by such Owner to the Board that said owner believes the offer to be bona fide in all respects. The Board of Administrators shall have a period of fourteen (14) days after receipt of said written notice within which to exercise its option to purchase or lease such Unit at the same price and on the same terms as the highest acceptable bona fide offer and shall have an additional period of not less than thirty (30) days within which to close the said transaction. The Board of Administrators may elect to purchase or lease such Unit on behalf of all of the remaining Unit Owners as a group or, if the remaining Unit Owners as a group do not wish to purchase or lease such Unit, then on behalf of any one or more individual Unit Owners. In the event the Board of Administrators shall elect to purchase or lease a Unit offered for sale or lease on behalf of all of the remaining Unit Owners, the cost thereof shall be shared by all of the remaining Unit Owners in the same proportion as Common Area Expenses, adjusted, however, to reflect the exclusion of the Unit purchased or leased; and any profit or loss realized upon the sale or lease by the Board of a Unit so acquired shall likewise be shared by all of the remaining Unit Owners.



In the event that the Board of Administrators shall elect to purchase or lease a Unit offered for sale or lease on behalf of any one or more individual Unit Owners, then the cost and Common Expenses thereof shall be shared by such purchasing Unit Owners in such proportion as they shall agree upon.

In the event that the Board shall elect not to purchase or lease such Unit within the time provided herein, the Unit Owner may, at the expiration of said 14-day period and at any time within ninety (90) days after the expiration of said period, contract to sell or lease such Unit to the proposed purchaser or lessee named in such notice upon the terms specified thereon. In the event that such Owner shall fail to so sell or lease such Unit to such purchaser or lessee within such 90-day period, or if during such 90-day period such Owner shall offer such Unit for sale or lease on terms more favorable to purchaser than those set forth in such notice, then the right of first refusal to the Board shall again become effective. In any event, the form and content of any lease with respect to any Unit shall be subject to the approval of the Board of Administrators.

The Board of Administrators, upon the request of a Unit Owner who has offered his Unit for sale or lease to the Board, shall execute in recordable form an instrument indicating compliance with the terms and provisions of this Declaration by such Owner. In the event that the Board shall elect not to purchase or lease the Unit so offered to it, the Unit Owner shall notify the Board in writing immediately upon the closing of the sale or lease, giving the name and address of the purchaser or lessee. Such Unit Owner shall likewise notify the Board of his failure to sell or lease such Unit within the times specified herein.

(b) No Unit Owner may mortgage his Unit or any interest therein without the prior written approval of the Board of Administrators, except as to a first mortgage lien made to a bank, mortgage banker, life insurance company or savings and loan association. The Board may, and it is hereby authorized to impose reasonable conditions upon which approval as to any other mortgage will be given. No Unit Owner may mortgage or otherwise encumber his Unit or any interest therein unless such mortgage or encumbrance shall provide for not less than ten (10) days' written notice to the Board of Administrators prior to any foreclosure under any such mortgage or other encumbrance; provided, however, that said Board may, in its discretion, waive said requirement for ten (10) days' notice as to any one or more mortgages. Each Unit Owner who shall mortgage or otherwise encumber his Unit or any interest therein shall furnish to the Board of Administrators a copy of all such mortgages, deeds of trust or other instruments creating such encumbrance. Any sale, voluntary transfer, conveyance or lease which is not authorized by the terms of this Declaration or for which authorization has not been obtained pursuant to the terms hereof is voidable and may be voided by certificates of the Board of Administrators duly recorded in the Office of the Recorder, Monroe County, Indiana.

(c) Approval by the Board of the sale or lease of any Unit shall not constitute a waiver of the right to approve any subsequent sale, subletting or assignment by the purchaser or lessee of such Unit.

(d) The following conveyances or leases are specifically excluded from the provisions of this paragraph 25:

- (1) Conveyances or leases of gift or such that are made without consideration;
- (2) Conveyances or leases by Declarant;
- (3) Leases of less than 90 days' duration;
- (4) Transfers or conveyances upon death; and
- (5) Conveyances or leases wherein the Association has, in writing, waived its right under this paragraph 25.

In addition, the right of first refusal of the Board of Administrators provided for in this paragraph 25 shall not apply to transfers, sales or conveyances involving a foreclosure sale or other judicial sale or transfer to a mortgagee in lieu of foreclosure, or any transfer by a mortgagee following foreclosure or any proceeding or arrangement in lieu thereof.

## 26. Rights of Declarant.

Notwithstanding anything contained in this Declaration, or in the By-Laws of any rules and regulations as may be adopted from time to time by the Board of Administrators, the Declarant is irrevocably empowered to sell, lease, rent and/or mortgage Units and portions thereof to any purchaser, lessee or mortgagee approved by it in his sole discretion and Declarant shall have the right to transact any business necessary to consummate sales or rentals of Units or portions thereof including, but not limited to, the right to maintain models, have signs, use the Common Areas and Facilities and show Units. The sales office, signs, and all items pertaining to sales shall not be considered Common Areas and Facilities, and shall remain the property of Declarant. Declarant retains the right to be the Owner of any unsold Units or parcels. Declarant, for such time as he continues to be a Unit Owner, shall only be required to contribute such sums to the Common Expenses of the Condominium, in addition to the total of the monthly Common Expenses assessment paid by all other Unit Owners, as may be required for the Association to maintain the Condominium, as provided in this Declaration and exhibits attached hereto; provided, however, in no event shall Declarant be required to contribute to the Common Expenses as to Units owned by him in an amount exceeding the amounts which would have been duly assessed by the Board for similar Units had they been sold to bona fide purchasers other than Declarant. Commencing one year after the date on which all of the Units have been deeded to Owners Declarant shall contribute to the Common Expenses as to the Units owned by him, in the same manner as all other Unit Owners.

27. Units Subject to Declaration, By-Laws, Rules and Regulations.

All present and future Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the By-Laws and any rules and regulations as may be adopted in accordance with the By-Laws, as said Declaration, By-Laws, rules and regulations may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, By-Laws and any rules and regulations which may be adopted are accepted and ratified by such Owner, tenant or occupant and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit as though such provisions were made a part of each and every deed of conveyance or lease.

28. Personal Property.

The Board of Administrators may acquire and hold, for the benefit of the Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in such personal property shall be held by the Owners in the same proportion as their respective undivided interests in the Common Areas and Facilities and shall not be transferable except with a transfer of a Unit. A transfer of a Unit shall vest in the transferee ownership of the transferor's beneficial interest in such personal property. At the time when the first conveyance of a Unit is made by Declarant to Owner(s), Declarant shall execute and deliver a bill of sale to the Board of Administrators, transferring title to all items of personal property located on the Property and furnished by Declarant, which personal property is intended for the common use and enjoyment of Owners.

29. Interpretation.

The provisions of this Declaration and the By-Laws shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium property.

30. Amendment to Declaration.

(a) By Owners. This Declaration may be amended by the vote of at least 75% in Common Interest of all Unit Owners, cast in person or by proxy at a meeting duly held in accordance with the provisions of the By-Laws, which such amendment shall become effective upon recordation of a written instrument duly executed and acknowledged by Unit Owners holding 75% in Common Interest of the Condominium in the Office of the Recorder of Monroe County, Indiana; provided, however, that any such amendment made pursuant to this paragraph 30(a) which amends or alters the percentage of undivided interests in the Common Areas and Facilities, or voting rights, shall require the approval of all Unit Owners and shall become effective only upon recordation in the appropriate registry of a written instrument executed and acknowledged by all Unit Owners.

(b) Reserved Rights of Declarant. Notwithstanding anything herein to the contrary, until all Units subject to this Declaration have been sold by Declarant and administration of the "Property" has been transferred to the Pointe Retreats Homeowners Association, Inc., no amendment to this Declaration shall be effective unless approved in writing by Declarant, and during said period, Declarant reserves the right to change the interior design and arrangement of any unsold Units, to alter the boundaries between unsold Units, to change the number of Units, to add such additional Common Areas and Facilities or recreational facilities, to add additional land to the land described in Exhibits A and F attached hereto and to add additional Units and Common Areas and Facilities or recreational facilities to such additional land as he may deem desirable without amendment of this Declaration in the manner hereinbefore set forth.

If Declarant shall make any changes in Units, as provided in this subparagraph (b), such changes shall be reflected by an amendment of this Declaration with Plans attached, reflecting such authorized alteration of Units, and said amendment need only be executed and acknowledged by Declarant. The Plans shall be certified in the manner required by the Act. If more than one Unit is concerned, the Declarant shall reapportion between the Units the shares in the Common Areas and Facilities appurtenant to the Units concerned, together with reapportioning the Common Expenses and Common Profits of the Units concerned, and such share of the Common Areas and Facilities, Common Expenses and Common Profits shall be duly noted in the amendment of this Declaration.

(c) Addition of New Phases. Declarant intends that Pointe Retreats condominium development will ultimately consist of up to a total of 200 Units including the 24 Units described in the within Declaration. Said 200 Units will consist of the initial phase covered by the within Declaration consisting of 24 Units and designated as Pointe Retreats Phase I Section I and one or more additional phases so that upon completion of the total Units contemplated Pointe Retreats will consist of 200 Units. Said additional Condominium Units will be contained in one or more phases to be constructed on an approximately 15 acre tract of land, the approximate boundaries of which are described in Exhibit F attached hereto and made a part hereof. Accordingly, Declarant reserves the right to amend this Declaration at any time within seven years from the date of recordation hereof, without the consent of the Owners, to incorporate into the Property (i) all or a portion of the additional property described in Exhibit F attached hereto and (ii) the additional Units constructed or to be constructed thereon by Declarant provided, however, that the total number of Condominium Units to be constructed on said additional land described in Exhibit F shall not exceed 176 Units so that the maximum Units which will comprise Pointe Retreats shall not exceed 200. The expansion of the Condominium shall be governed by the following provisions:

(i) The area comprised within the present development and described in Exhibit A attached hereto is herein denominated the "Present Condominium Area." The Declarant reserves the right, to



be exercised in his sole discretion, from time to time within a seven year period from the date of recordation of this Declaration, to annex to the Present Condominium Area all or a portion of the land described in Exhibit F attached hereto and made a part hereof which such land is herein denominated the "Development Area". Such annexation shall be by the recordation of an Amended Condominium Declaration (the "Amended Declaration"), and no rights of any type or character whatsoever of any Unit Owner in annexations within the Development Area shall attach until such Amended Declaration is recorded annexing part or all of the Development Area to the Condominium Regime hereby created. Upon the recordation of such Amended Declaration, the land therein so described, and the Condominium Units and all other improvements located thereon, shall be deemed to be governed in all respects by the provisions of this Declaration. The Declarant further reserves the right, in the exercise of its sole discretion, to add land to said Development Area by a declaration stating such intention and describing the land so added.

(ii) Any Amended Declaration which is filed to accomplish annexation of land to the Present Condominium Area as aforesaid shall prescribe and adjust the percentage interest in the Common Areas and Facilities for all Units, if any, created by said Amended Declaration, and for all Units created by prior Amended Declaration, if any, and for all units created by the within Declaration, on the following basis:

(A) For the purpose of this section, the following definitions shall be controlling:

At the time of recordation of each Amended Declaration,

(1) Existing Units and Existing Common Areas and Facilities shall mean, respectively, those Units and Common Areas and Facilities in existence prior to the creation of New Units and New Common Areas and Facilities by each aforesaid Amended Declaration, whether created by a prior Amended Declaration or this Declaration.

(2) New Units and New Common Areas and Facilities shall mean, respectively, those Units and Common Areas and Facilities which are created and added by each aforesaid Amended Declaration.

(3) Aggregated Units and Aggregated Common Areas and Facilities shall mean, respectively, the sum of all Existing Units and New Units, and the sum of all Existing Common Areas and Facilities and New Common Areas and Facilities.

(B) At the time of recordation of each Amended Declaration, the square footage of the Property as a whole shall be the sum of the square footage of all Existing Units and New Units.

The percentage interest in the Aggregate Common Areas and Facilities which is appurtenant to each Unit shall be based upon the ratio of the square footage of each Unit, whether an Existing Unit or New Unit, to the total square footage of all Units.

The recording of an Amended Declaration pursuant to this section shall not alter or affect the amounts due from any Owners of Existing Units for Common Expenses or other assessments nor shall it alter or affect the lien securing such amounts.

(iii) Each deed to a Unit is given on a conditional limitation to the end that the percentage interest of the grantee in the Common Areas and Facilities shall be divested pro tanto and vest in the grantees of other Units in accordance with the terms of this Declaration and Amended Declarations which may be recorded pursuant hereto. In addition, the Declarant reserves the right of revocation which such right may be exercised to aid in accomplishing this purpose.

Each deed to a Unit shall be deemed to reserve to the Declarant the power to appoint to Unit Owners, from time to time, the percentage interest in the Common Areas and Facilities set forth in any Amended Declaration or Declarations, and the acceptance of such a deed by the grantee therein shall constitute the following on his part and on the part of all those claiming under him, including all mortgagees:

(A) A grant of an irrevocable power of attorney coupled with an interest to the Declarant acting by and through his authorized personnel, his successors, assigns or designees, and each of them singly as attorney-in-fact, to shift the percentages of undivided ownership interest in the Common Areas and Facilities in accordance with the provisions of this Declaration and of Amended Declarations recorded pursuant hereto; and

(B) An agreement with and consent to the following:

(1) The percentage of undivided ownership interest in the Common Areas and Facilities of each Unit shall automatically be shifted and reallocated in the manner set forth in each recorded Amended Declaration;

(2) That upon the recording of each such Amended Declaration, the amount by which the percentage of undivided interest in the Common Areas and Facilities of each Unit is reduced by said Amended Declaration shall thereby be released and divested by and from the Owner of the Unit so affected and reallocated among other Owners of Units as set forth in such Amended Declaration;

(3) The foregoing provisions of this section are designed to accomplish a valid shifting in the percentages of ownership in the Common Areas and Facilities among the various Unit Owners as more Units are added. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other for accomplishing their respective goals; and

(4) That this Declaration is in accordance with the Act.

(d) The Homeowners Association shall cause written notice to be given to the holder of any Mortgage on any Unit in the Condominium at least thirty (30) days prior to the effective date of any amendment to this Declaration.

(e) Declarant reserves the right, in his discretion, to construct a tennis court, swimming pool and similar related facilities on a portion of the Property described in Exhibit F, and which Declarant intends, by Amended Declarations, to include by expansion within the Pointe Retreats regime. Such tennis court, swimming pool and similar related facilities shall, when constructed, constitute Common Areas and Facilities. While said facilities are not presently located within the Property designated as Phase I Section I of Pointe Retreats, the same shall, nevertheless, be available for use to the Owners of Units described in this Declaration. Recognizing that said recreational facilities will ultimately be located within the Property, the cost and expense of maintaining and operating such facilities shall be treated as a Common Expense hereunder.

### 31. Supplemental Declarations to Establish Time Share Ownership Interests in Units.

Declarant, or any grantee of a Unit from Declarant under a deed which expressly recites that it is intended to substitute the grantee as Declarant under the Supplemental Declaration, reserves the right, at any time prior to conveyance of a Unit pursuant to an "Original Deed", to record with the Recorder of Monroe County, Indiana, a Supplemental Declaration, in substantially the form attached hereto as Exhibit "G", with respect to any Unit creating undivided interests in the Unit together with the exclusive right to occupy the Unit during specified time periods as more particularly set out therein. No notice to or approval of any Owner, the Association of Co-Owners, mortgagees or any other person shall be required prior to filing of a Supplemental Declaration. Filing of a Supplemental Declaration shall not constitute addition of a New Phase or New Units within the meaning of paragraph 30(c) hereof.

### 32. Enforcement.

Each Unit Owner shall comply strictly with the provisions of this Declaration, the By-Laws, and the rules, regulations and decisions issued pursuant thereto and as the same may be lawfully amended from time to



time. Failure to do so shall be grounds for an action to recover sums due for damages, injunctive relief, or both, maintainable by the Board of Administrators or manager on behalf of the Homeowners Association or, in a proper case, by an aggrieved Owner.

33. Floor Plan.

The Plans setting forth the layout, location, identification number, Building designation and dimensions for all Units and the Property are incorporated into this Declaration by reference. Such Plans, which are attached hereto as Exhibit D, have been filed in the Office of the Recorder of Monroe County, Indiana, in Horizontal Property Plan File No. 2 on December 11, 1984 as Instrument Number \_\_\_\_\_.

34. Invalidity.

The invalidity of any provisions of this Declaration shall not be deemed to impair or affect in any manner the validity and enforceability or effect of the remainder of this Declaration, and in such event, all the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

35. Waiver.

No provisions contained in the Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

36. Captions.

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provisions hereof.

37. Law Controlling.

This Declaration and the By-Laws attached hereto shall be construed and controlled by and under the laws of the State of Indiana.

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

*Ronald J. Killion*  
*By William H. Andrews, atty-in-fact*  
\_\_\_\_\_  
Ronald J. Killion by  
William H. Andrews, his  
Attorney-in-Fact

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 WILLIAM H. ANDREWS, by me known to be Attorney-in-  
Fact for Ronald J. Killion, who acknowledged the execution of the above  
and foregoing Declaration.

WITNESS my hand and Notarial Seal this 11<sup>th</sup> day of December, 1984.

(SEAL)

My Commission Expires:

February 1, 1986

Vickie R. Rentrow  
NOTARY PUBLIC  
Vickie R. Rentrow  
Residing in Monroe County

EXHIBIT A  
 POINTE RETREATS - PHASE I - SECTION I  
 LEGAL DESCRIPTION

Part of the Northwest 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 Southeast corner of said Northwest Quarter Section; thence North 89 degrees 46 minutes 58 seconds West along the South line of said Northwest Quarter Section 718.98 feet to a point on the Monroe Reservoir boundary line, being 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 eight (8) courses being along said boundary line of Monroe Reservoir:

- (1) North 71 degrees 44 minutes 20 seconds East 45.00 feet;
- (2) North 20 degrees 57 minute 20 seconds East 287.00 feet;
- (3) North 15 degrees 34 minutes 20 seconds East 201.40 feet;
- (4) North 13 degrees 58 minutes 20 seconds East 331.10 feet;
- (5) North 11 degrees 30 minutes 20 seconds East 149.90 feet;
- (6) North 6 degrees 05 minutes 40 seconds West 133.10 feet;
- (7) North 32 degrees 56 minutes 40 seconds West 286.50 feet;
- (8) North 5 degrees 41 minutes 20 seconds East 72.88 feet; to the point of beginning; thence South 82 degrees 22 minutes 55 seconds West 414.32 feet to a point on the east line of Golf Course Parcel VII (Deed Record 292, page 470 in the Office of the Recorder of said Monroe County) thence along said east line North 8 degrees 18 minutes 23 seconds West 167.51 feet; thence North 79 degrees 13 minutes 55 seconds East 253.19 feet; thence South 66 degrees 38 minutes 40 seconds East 210.83 feet to the said Monroe Reservoir Boundary Line; thence along said boundary South 5 degrees 41 minutes 20 seconds West 74.92 feet to the point of beginning, containing 1.52 acres, more or less.

ALSO, an Ingress-Egress easement being part of the Northwest quarter of Section 22, Township 7 North, Range 1 West, Monroe County, Indiana, being more particularly described as follows:

Commencing at an existing stone marking the Southeast corner of said Northwest Quarter Section; thence North 89 degrees 46 minutes 58 seconds West along the South line of said Northwest Quarter Section 718.98 feet to a point on the Monroe Reservoir Boundary Line, being 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 eight (8) courses being along said Monroe Reservoir Boundary Line:

- (1) North 71 degrees 44 minutes 20 seconds East 45.00 feet;
  - (2) North 20 degrees 57 minute 20 seconds East 287.00 feet;
  - (3) North 15 degrees 34 minutes 20 seconds East 201.40 feet;
  - (4) North 13 degrees 58 minutes 20 seconds East 331.10 feet;
  - (5) North 11 degrees 30 minutes 20 seconds East 149.90 feet;
  - (6) North 6 degrees 05 minutes 40 seconds West 133.10 feet;
  - (7) North 32 degrees 56 minutes 40 seconds West 286.50 feet;
  - (8) North 5 degrees 41 minutes 20 seconds East 147.80 feet; thence North 66 degrees 38 minutes 40 seconds West 210.83 feet; thence South 79 degrees 13 minutes 55 seconds West 205.23 feet to the point of beginning, said point also being a point on the southerly line of Golf Course Parcel VIII as recorded in Deed Record 292, page 470 in the Office of the Recorder of said Monroe County, thence the next four (4) courses being along said Golf Course Parcel VIII's southerly and westerly boundary:
    - (1) North 10 degrees 46 minutes 04 seconds West 31.02 feet to a non-tangent curve concave to the southwest having a central angle of 43 degrees 09 minutes 39 seconds and a radius of 350.00 feet;
    - (2) thence Northwesterly along said curve 263.65 feet to a tangent curve concave to the northeast having a central angle of 56 degrees 33 minutes 45 seconds and a radius of 175.00 feet;
    - (3) thence Northwesterly along said curve 172.76 feet to a tangent curve concave to the east, having a central angle of 17 degrees 09 minutes 23 seconds and a radius of 850.00 feet;
    - (4) thence northerly along said curve 254.52 feet to a a point on the southerly line of an Ingress-Egress easement as recorded in Deed Record 264, page 98 in the Office of the Recorder of said Monroe County; thence North 88 degrees 39 minutes 30 seconds West along said southerly line 60.00 feet to a point on the easterly line of Golf Course Parcel VII as recorded in Deed Record 292, page 470, in the Office of the Recorder of said Monroe County; said point also being the intersection with a non-tangent curve concave to the East, having a central angle of 17 degrees 11 minutes 06 seconds and a radius of 910.00 feet; thence the next four (4) courses being along said Golf Course Parcel VII easterly boundary:
      - (1) thence along said curve 272.94 feet;
      - (2) South 14 degrees 38 minutes 46 seconds East 36.46 feet;
      - (3) South 43 degrees 01 minutes 02 seconds East 164.38 feet;
      - (4) South 55 degrees 19 minutes 57 seconds East 257.72 feet;
- thence North 79 degrees 13 minutes 55 seconds East 47.96 feet to the point of beginning, containing 1.11 acres, more or less. Subject to all easements and rights-of-ways.

EXHIBIT C

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to

DECLARATION OF CONDOMINIUM FOR  
POINTE RETREATS PHASE I SECTION I CONDOMINIUM

Master Site Plan

4  
The plat of survey for Pointe Retreats Phase I Section I dated November 30, 1984, prepared by Stephen L. Smith, Registered Land Surveyor entitled "Master Site Plan Pointe Retreats Phase I Section I" and consisting of one sheet, which was attached to this Declaration at the time it was filed for record is duly filed in the Office of the Recorder\* of Monroe County, Indiana in Horizontal Property Plan File Number 2 on December 11, 1984 as Instrument Number \_\_\_\_\_. Said Master Site Plan is incorporated herein by reference as though fully set out herein

**POINTE RETREATS**  
**SECTION I OF PHASE I**  
**EXHIBIT "C"**  
**MASTER SITE PLAN**

ATTACHED TO AND MADE A PART OF DECLARATION  
OF CONDOMINIUM FOR POSITE RETREATS PHASE I

PLANS PREPARED BY:  
**SMITH  
QUILLMAN  
ASSOCIATES**



**KEY MAP**

UNIT	DESIGN	LEVEL	LEVEL FLIGHT	NUMBER PLACES
A	1	100, 777, 770	151, 64	416, 78
A	2	1 80, 777, 770	142, 31	416, 78
A	3	1 80, 777, 770	142, 31	416, 78
A	4	1 80, 777, 770	142, 31	416, 78
A	5	1 80, 777, 770	142, 31	416, 78
A	6	1 80, 777, 770	142, 31	416, 78
A	7	1 80, 777, 770	142, 31	416, 78
A	8	1 80, 777, 770	142, 31	416, 78
A	9	1 80, 777, 770	142, 31	416, 78
A	10	1 80, 777, 770	142, 31	416, 78
A	11	1 80, 777, 770	142, 31	416, 78
A	12	1 80, 777, 770	142, 31	416, 78
B	1	100, 777, 770	151, 64	416, 78
B	2	1 80, 777, 770	142, 31	416, 78
B	3	1 80, 777, 770	142, 31	416, 78
B	4	1 80, 777, 770	142, 31	416, 78
B	5	1 80, 777, 770	142, 31	416, 78
B	6	1 80, 777, 770	142, 31	416, 78
B	7	1 80, 777, 770	142, 31	416, 78
B	8	1 80, 777, 770	142, 31	416, 78
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This manufacturer does not take into consideration additional costs that an entrepreneur would incur in order to produce a product that is not in demand. Production of excess items has not been banned in the Cold and we are not aware of any other government action to limit overproduction.

In the very distant future, I hardly anticipate that the survey will be taken into account in the production of goods. It is not used by the government in the period when it is performed either for the sale of goods or for the production of goods. It is not used by the government in the period when it is performed either for the sale of goods or for the production of goods.

Copyright © 1994 by the author.

Classified until 30<sup>th</sup> day of November, 1984.

Signature of Agent: \_\_\_\_\_  
 Agent Name: \_\_\_\_\_  
 Agent Title: \_\_\_\_\_  
 Agent Address: \_\_\_\_\_  
 Agent City: \_\_\_\_\_  
 Agent State: \_\_\_\_\_  
 Agent Zip: \_\_\_\_\_  
 Agent Phone: \_\_\_\_\_  
 Agent Fax: \_\_\_\_\_  
 Agent Email: \_\_\_\_\_  
 Agent Website: \_\_\_\_\_  
 Agent Social Media: \_\_\_\_\_  
 Agent Other: \_\_\_\_\_

J. STALLON, SINGS THE CHORUS OF THE MOVIE  
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SWEET AREA AND FACILITIES AND LOGGING  
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**THE COURT REPORTERS IN CHARGE**

IC IS NOT FOR ONE PARTY OR GROUP. I, THERE, NO KNOWLEDGE OF THE PARTY FOR THE PURPOSES OF THE PARTY. I AM NOT, THERE, NO KNOWLEDGE OF THE PARTY.

24-57 JAMES EARL RAY

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7-11-68

1. CANTON, AUG. 10  
BETWEEN 7 30 A. M. & 12  
MIDNIGHT, AUGUST 10, 1904

EXHIBIT D

BOOK 153 PAGE 284

to

DECLARATION OF CONDOMINIUM FOR  
POINTE RETREATS PHASE I SECTION I CONDOMINIUM

Plans and Specifications

The Plans and outline specifications for Pointe Retreats Phase I Section I more particularly described in the architectural, plumbing, mechanical and electrical drawings for Pointe Retreats Phase I Section I were attached to this Declaration at the time it was filed for record and are duly filed in the office of the Recorder of Monroe County, Indiana in Horizontal Property Plan File Number 2 on December 11, 1984, as Instrument Number \_\_\_\_\_, reference to which is hereby made and said Plans and outline specifications are incorporation herein by reference as though fully set out herein.



## EXHIBIT E

153 PAGE 285

## POINTE RETREATS - PHASE I - SECTION I

<u>Unit Designation</u> <u>Bldg.</u>	<u>Unit</u>	<u>Floor</u> <u>Plan</u>	<u>Square</u> <u>Footage</u>	<u>Percentage</u> <u>Interest</u>	<u>Address</u>
A	A-1	1F	460	4.167%	Bloomington, IN 47401
A	A-2	1F	460	4.167%	Bloomington, IN 47401
A	A-3	1F	460	4.167%	Bloomington, IN 47401
A	A-4	1F	460	4.167%	Bloomington, IN 47401
A	A-5	1F	460	4.167%	Bloomington, IN 47401
A	A-6	1F	460	4.167%	Bloomington, IN 47401
A	A-7	1F	460	4.167%	Bloomington, IN 47401
A	A-8	1F	460	4.167%	Bloomington, IN 47401
A	A-9	1F	460	4.167%	Bloomington, IN 47401
A	A-10	1F	460	4.167%	Bloomington, IN 47401
A	A-11	1F	460	4.167%	Bloomington, IN 47401
A	A-12	1F	460	4.167%	Bloomington, IN 47401
B	B-13	1F	460	4.167%	Bloomington, IN 47401
B	B-14	1F	460	4.167%	Bloomington, IN 47401
B	B-15	1F	460	4.167%	Bloomington, IN 47401
B	B-16	1F	460	4.167%	Bloomington, IN 47401
B	B-17	1F	460	4.167%	Bloomington, IN 47401
B	B-18	1F	460	4.167%	Bloomington, IN 47401
B	B-19	1F	460	4.167%	Bloomington, IN 47401
B	B-20	1F	460	4.167%	Bloomington, IN 47401
B	B-21	1F	460	4.167%	Bloomington, IN 47401
B	B-22	1F	460	4.167%	Bloomington, IN 47401
B	B-23	1F	460	4.167%	Bloomington, IN 47401
B	B-24	1F	460	4.167%	Bloomington, IN 47401

EXHIBIT F  
POINTE RETREATS - EXPANSION AREA  
LEGAL DESCRIPTION

BOOK 153 PAGE 286

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

Commencing at an existing stone marking the southeast corner of said northwest quarter section; thence North 89 degrees 46 minutes 58 seconds West along the south line of said northwest quarter section 718.98 feet to the point of beginning, said point being on the Monroe Reservoir Boundary Line, being the U.S. Government Fee Line as shown on drawings on file in the Office of District Engineer, Corps of Engineers, Louisville, Kentucky; thence the next eight (8) courses being along said boundary line:

- (1) North 71 degrees 44 minutes 20 seconds East 45.00 feet;
- (2) North 20 degrees 57 minutes 20 seconds East 287.00 feet;
- (3) North 15 degrees 34 minutes 20 seconds East 201.40 feet;
- (4) North 13 degrees 58 minutes 20 seconds East 331.10 feet;
- (5) North 11 degrees 30 minutes 20 seconds East 149.90 feet;
- (6) North 6 degrees 05 minutes 40 seconds West 133.10 feet;
- (7) North 32 degrees 56 minutes 40 seconds West 286.50 feet;
- (8) North 5 degrees 41 minutes 20 seconds East 72.88 feet; thence South 82 degrees 22 minutes 55 seconds West 414.32 feet to a point on the east line of Golf Course Parcel VII (Deed Record 292, page 470, Office of the Recorder of Monroe County); thence the next two (2) courses being along said east line:

- (1) South 8 degrees 18 minutes 23 seconds East 613.91 feet;
- (2) South 4 degrees 55 minutes 09 seconds West 734.71 feet; thence South 86 degrees 15 minutes 56 seconds East 187.33 feet; thence North 71 degrees 44 minutes 20 seconds East along the said Monroe Reservoir Boundary Line 54.20 feet to the point of beginning, containing 13.11 acres more or less. Subject to all easements and right-of-ways.

EXHIBIT G

BOOK 153 PAGE 287

SUPPLEMENTAL DECLARATION OF TIME SHARE  
COVENANTS, CONDITIONS AND RESTRICTIONS

CONDOMINIUM UNIT \_\_\_\_\_ IN BUILDING \_\_\_\_\_,

POINTE RETREATS - PHASE I - SECTION I

THIS SUPPLEMENTAL DECLARATION is made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by Ronald J. Killion ("Declarant"), owner of a condominium unit at the condominium project known as Pointe Retreats - Phase I - Section I, created pursuant to a Declaration of Expandable Condominium recorded on \_\_\_\_\_, 198\_\_\_\_, in Book \_\_\_\_\_, pages \_\_\_\_\_, in the Office of the Recorder of Monroe County, Indiana. The condominium unit consists of a fee simple interest in Unit No. \_\_\_\_\_ in Building No. \_\_\_\_\_ (the "Unit"), together with an undivided interest in the Common Areas and Facilities as set forth in the Declaration, and together with all appurtenant rights and easements.

Declarant proposes to convey undivided interests in the Condominium providing in each deed that the grantee shall have the exclusive right to occupy the Unit and, as between owners of interests in the Condominium, to use the Common Areas and Facilities and the rights and easements appurtenant to the Condominium during one or more of the following Use Periods, and reserving to Declarant and its successors the exclusive right to occupy the Unit and as between owners of interests in the Condominium to use the said Common Areas and Facilities and appurtenant rights and easements, during all other Use Periods; and, for that purpose, has designated Use Periods and intervening Service Periods and has allocated undivided interests in the Condominium to the respective Use Periods so designated in proportion to the original estimated value of each, all as set forth in Exhibit "A" attached hereto.

By this Declaration, Declarant intends to establish a common scheme and plan for the use, enjoyment, repair, maintenance, restoration, remodeling and improvement of the Condominium and the interests therein so conveyed or reserved, and the payment of taxes, assessments and other expenses pertaining thereto, and declares that the Condominium is and shall be held, conveyed, hypothecated, encumbered, leased, rented, occupied and improved subject to the following limitations, restrictions, covenants and conditions, all of which are declared to be in furtherance of a plan established for the purpose of enhancing and perfecting the value, desirability and enjoyment of the Condominium and the interests so to be conveyed or reserved. All such limitations, restrictions, covenants and conditions are intended to run with the land, to-wit: the interests so conveyed or reserved, and to inure to the benefit of and be binding upon each interest so conveyed or reserved and all parties having or acquiring any right, title, interest or estate therein:

1. Definitions. The following terms as used in this Declaration shall have the following meanings:

(a) "Declarant" shall mean Ron Killion or any successor in interest by merger, or by express assignment of the rights of Declarant hereunder by instrument executed by Declarant and recorded in the Official Records of Monroe County.

(b) The "Condominium" shall mean the above-referred to condominium with respect to which this Supplemental Declaration is made, including all appurtenant rights and easements, and its percentage interest in Common Areas and Facilities as set forth in the Declaration, as amended from time to time.

(c) The "Unit" shall mean the residential Unit included in the Condominium.

(d) "Use Period" shall mean one of the Use Periods designated in Exhibit "A" hereto, being a period established for the exclusive use of the Unit by an Owner; and "Service Period" shall mean one of the Service Periods designated therein. However, so long as an Owner's Time Interest includes two consecutive Use Periods separated by a Service Period, such Service Period shall be added to and be included in the first of two consecutive Use Periods, and shall not be a Service Period within the meaning of this Supplemental Declaration.

(e) "Time Interest" shall mean an undivided interest in the Condominium, together with the exclusive right to use and occupy the Unit during one or more Use Periods as provided in this Supplemental Declaration.

(f) "Original Deed" shall mean the deed from Declarant first recorded after the date hereof which conveys each Time Interest conveyed by Declarant; excluding, however, any deed which conveys the entire interest in the Condominium then held by Declarant, which expressly recites that it is not an original Deed within the meaning of this Supplemental Declaration and that it is intended to substitute the grantee as Declarant hereunder, and which includes an express assignment of the rights of Declarant under this Supplemental Declaration.

(g) "Owner" shall mean and include (i) the grantee or grantees named in each Original Deed to a Time Interest; (ii) the successive owners of each Time Interest so conveyed by Declarant; and (iii) Declarant with respect to any Time Interest not conveyed.

(h) "Common Furnishings" shall mean furniture and furnishings for the Unit or other personal property from time to time owned or held for use in common by all Owners during their respective Use Periods.

(i) The "Agent" shall mean the Owners' Agent appointed as hereinafter provided.

(j) "Project" shall mean the horizontal property regime of which the Condominium is a part.

(k) "Owners Association" shall mean the Pointe Retreats Homeowners Association, Inc., or any successor body thereto.

(l) A "Majority in Interest of Owners" shall mean an Owner or Owners owning in the aggregate more than fifty percent (50%) of the undivided interest in the Condominium.

2. exclusive Use and Occupancy. Each Owner shall have the exclusive right to occupy the Unit, and as between Owners to use and enjoy the Common Areas and Facilities of the Project and the rights and easements appurtenant to the Condominium during such of the above Use Periods as are set forth in the Original Deed of his interest (and, in the case of Declarant, during all Use Periods not included in any Time Interests theretofore conveyed), and to authorize others so to do, together with the non-exclusive right in common with all other Owners, but only when acting through the Agent (or, if no Agent be appointed and acting, when acting with a Majority in Interest of Owners), to maintain and repair the Unit during Service Periods. No Owner shall occupy the Unit or exercise any other rights of ownership in respect of the Condominium, other than the rights herein provided to him, during any other Use Period unless expressly so authorized by the Owner entitled to occupy the Unit during such Use Period or during any Service Period, except when acting through the Agent (or, if no Agent be appointed and acting, when acting with a Majority in Interest of Owners). Each Owner shall keep the Unit and all Common Furnishings in good condition and repair during his Use Periods, vacate the Unit at the expiration of his Use Period or Periods, remove all persons and property therefrom, excluding only Common Furnishings, leave the Unit in good and sanitary condition and repair, and otherwise comply with such reasonable checkout and other procedures as may from time to time be contained in rules promulgated by the Agent or by a Majority in Interest of Owners.

3. Management. Management, maintenance and repair of the Unit, acquisition, maintenance, repair and replacement of Common Furnishings, and administration of the affairs of Owners with respect to the use and occupancy of the Unit and payment of expenses and costs enumerated in this Supplemental Declaration, shall be under the direction and control of an Agent appointed by a Majority in Interest of Owners. The Agent so appointed shall have exclusive possession of the Unit during the Service Periods and is expressly authorized, in the Agent's discretion and on behalf of the Owners, to do any or all of the following to the extent not inconsistent with directions given by a Majority in Interest of Owners:



- (a) To repair, maintain, repaint, remodel, furnish or refurnish the Unit or any part thereof; to establish reserves for anticipated costs, including the acquisition and replacement of Common Furnishings; and to acquire and pay for materials, supplies, furniture, furnishings, labor or services which the Agent deems necessary or proper for the maintenance and operation of the Unit. The Agent shall not, however, make any discretionary capital expenditure which exceeds available reserves by more than One Thousand Dollars (\$1,000.00) without the prior approval of a Majority in Interest of Owners.
- (b) To pay all taxes and assessments, including assessments by the Homeowners Association or The Pointe Services Association, Inc., and other costs or charges affecting or relating to the Unit and the Project; and to discharge, contest or protest liens or charges affecting the Unit or the Project.
- (c) To obtain and pay the cost of electrical, telephone, gas, cable television and other utility services for the Unit; and to apply for and maintain an annual family membership for the Unit in the golf and tennis club at The Pointe so long as such membership is available.
- (d) To adopt from time to time and enforce reasonable rules relating to the possession, use and enjoyment of the Unit by the Owners.
- (e) To obtain and pay the cost of legal and accounting services necessary or proper in the maintenance and operation of the Condominium and the enforcement of this Supplemental Declaration.
- (f) To the extent not provided for in insurance policies maintained by the Homeowners Association, to obtain and pay the cost of: (i) insurance covering the Unit and the Common Furnishings against loss or damage by fire and other hazards customarily covered by fire insurance policies written with extended coverage; (ii) public liability insurance, insuring against liability for personal injury or property damage resulting from an occurrence in, on or about the Unit; and (iii) any other insurance deemed necessary or desirable by the Agent or by a Majority in Interest of Owners. The policies of insurance shall cover such risks, be written by such insurers, and in such amounts, as the Agent shall deem proper.
- (g) To exercise on behalf of the Owners the voting rights and other membership rights of the Unit in the Homeowners Association and in The Pointe Services Association, Inc. If the notice or agenda for any regular or special meeting of the members of the Homeowners Association of The Pointe Services Association, Inc. is available within sufficient time, the Agent shall promptly notify each Owner of the items to be discussed and presented at such meeting, as shown by the notice or agenda, and request that each Owner indicate

in writing to the Agent his preference as to the vote on items disclosed by the notice or agenda. The Agent shall vote in such manner as may be directed by a Majority in Interest of Owners or, in the absence of direction from a Majority in Interest of Owners, shall vote as the Agent deems to be in the best interest of the Owners. Each Owner authorizes the Agent to act for him at any such meeting and, for this purpose shall deliver to the Agent a proxy authorizing the Agent to act for such Owner at any such meeting whenever requested so to do.

(h) To do all other acts or things necessary or appropriate to the ordinary and necessary operation and maintenance of the Unit, or to preserve and protect the Unit or the Project in the event of any emergency.

(i) To delegate the authority and responsibilities of Agent hereunder to one or more sub-agents for such periods and upon such terms as the Agent deems proper.

(j) To collect, either in advance of disbursement or following disbursement if the Agent advances sums in payment of any of the foregoing, each Owner's share of the aforesaid costs and any other amount properly expended by the Agent; to estimate any such expenditure in advance, and to bill the Owners accordingly; and to take proper steps to enforce any Owner's obligations hereunder.

4. Unit Expenses. Each Owner shall pay:

(a) The cost of long distance telephone charges or telephone message unit charges, fire wood or other special services allocable to the occupancy of the Unit during such Owner's Use Period or Periods; the cost to repair any damage to the Unit or to repair or replace any property contained therein on account of loss or damage occurring during his Use Period or Periods; and the cost to satisfy any expense to any of the other Owners due to any intentional or negligent act or omission of such Owner, his family, guests, invitees, tenants or lessees or resulting from his breach of any provisions of this Supplemental Declaration;

(b) A share of the following costs and expenses (including such thereof as may be included in any assessment by the Homeowners Association or The Pointe Services Association, Inc.) which bears the same relationship to the whole as such Owner's undivided ownership interest in the Condominium bears to the entire ownership: (i) real property taxes and special assessments; (ii) insurance premiums for fire and extended coverage insurance and other casualty insurance from time to time payable; and (iii) amount necessary to establish proper reserves for the foregoing items;

(c) A share of the following costs and expenses which bears the same relationship to the whole as the number of weeks in such Owner's Use Period or Periods bears to the total of fifty-one (51) weeks included in all Use Periods: (i) basic telephone charges and

cost of utility services, the annual charge for a family membership in the golf and tennis facility of The Pointe, which membership shall be continuously maintained on behalf of the Unit so long as such membership is available, costs of other recreational privileges and other standard services; (ii) cost of ordinary repair and maintenance of the Unit, including mail services and associated costs incurred during Service Periods, maid service and acquisition, repair, replacement and maintenance of the Common Furnishings; (iii) premiums for liability insurance; (iv) the Agent's reimbursable administrative expenses and other costs and expenses herein authorized to be paid and not otherwise allocated; and (v) amounts necessary to establish proper reserves for the foregoing items; and

(d) Other costs and expenses elsewhere herein provided to be paid, including the Agent's compensation.

All such payments shall be made through the Agent unless the Agent or a Majority in Interest of Owners otherwise directs. The Agent shall be under no obligation to, but may in its discretion, advance sums required to pay the obligations of any one or more of the Owners or to make the aforesaid payments or incur obligations within the Agent's authority, notwithstanding the failure of any one or more of the Owners to provide funds therefor. The Agent shall not be responsible for the acts or conduct of any of the Owners or for the breach of any of the obligations of any of the Owners hereunder. The Agent shall not be liable to any Owner in the absence of bad faith or negligence but shall hold the Owners harmless from and against any and all claims, expenses, liabilities, demands, causes of action, awards, or judgments rendered against the Agent or the Owners arising out of or in connection with the negligent conduct of the Agent, its officers, employees or sub-agents.

The Agent may in its discretion estimate the amounts to be paid by each Owner in advance and provide procedures for the payment thereof in equal periodic installments or otherwise, and may require additional or supplemental payments of amounts properly payable by the Owners in addition to any such estimated payments, and may include in any such estimated or supplemental payments provision for payment of the Agent's compensation. Each Owner shall pay to the Agent, within ten (10) days after receipt of a statement therefor, the amount of any costs payable by the Owner hereunder, including estimated costs and amounts required to establish and maintain reserves authorized hereunder.

5. The Agent. Declarant shall act as Agent for a period of \_\_\_\_\_ years from the date of this Supplemental Declaration or until such earlier date as Declarant may resign by not less than ninety (90) days notice to each of the Owners or a successor Agent may be appointed by a Majority in Interest of Owners.

Each successor Agent shall be a licensed real estate broker selected by, and shall serve during such period as may be determined by, a Majority in Interest of Owners. The appointment of each successor Agent shall be evidenced by a written agreement executed by a Majority in Interest of Owners and by the successor Agent. During any period when no Agent is acting, a Majority in Interest of Owners shall have all of the rights herein conferred upon the Agent.

The Agent shall be entitled to compensation from each Owner for its services as Agent in an amount equal to \_\_\_\_\_ of the amounts payable by such Owner pursuant to Section 4 of this Supplemental Declaration (excluding therefrom only the Agent's compensation), or to such other compensation as may be agreed upon by the Agent and a Majority in Interest of Owners, and to reimbursement for the reasonable and necessary administrative costs of discharging its obligations hereunder, including properly allocable salaries of administrative, secretarial and other personnel employed at the site.

6. Separate Mortgages. Each Owner shall have the right to mortgage or otherwise encumber his Time Interest. No Owner shall attempt to mortgage or otherwise encumber in any manner whatsoever the Condominium or the Project or any part thereof except his Time Interest, nor shall any Owner have the right or authority so to do. Any mortgage, deed of trust or other encumbrance of any Time Interest shall be subordinate to all of the provisions of this Supplemental Declaration; and in the event of foreclosure, the provisions of this Supplemental Declaration shall be binding upon any Owner whose title is derived through foreclosure, by private power of sale, judicial foreclosure, deed in lieu of foreclosure, or otherwise.

Notwithstanding any other provisions of this Supplemental Declaration, no breach of the provisions herein contained, nor the enforcement of any lien created pursuant to the provisions hereof, shall defeat or render invalid the lien of any mortgage or deed of trust of any Owner's Time Interest if such mortgage or deed of trust is recorded in the Official Records of Monroe County and is given in good faith and for value.

7. Waiver of Partition. No Owner or other person or entity acquiring any right, title or interest in the Condominium shall seek or obtain through any legal procedures, judicial partition of the Condominium or the Project or sale of the Condominium in lieu of partition of any date prior to the expiration of sixty (60) years after the date of this Supplemental Declaration. If, however, any Time Interest shall be owned by two (2) or more persons as tenants-in-common or as joint tenants, nothing herein contained shall prohibit a judicial sale of the Time Interest in lieu of partition as between such co-tenants or joint tenants.

8. Establishing of Time Interests. Any Time Interest conveyed by Declarant and any Time Interest from time to time retained by Declarant shall consist of the right exclusively to occupy the Unit, and as



between Owners to use and enjoy the Common Areas and Facilities of the Project and rights and easements appurtenant to the Unit during one or more Use Periods as herein provided, together with the undivided interest in the Project allocated hereunder to such Use Period or Periods. Once a Time Interest has been established by the execution and recording of an Original Deed thereto, no Owner shall sell, convey, hypothecate or encumber less than all of his interest in any Time Interest as set forth in such Original Deed; and any sale, conveyance, hypothecation or encumbrance by any Owner of less than all of his interest in a Time Interest as set forth in an Original Deed shall be null, void and of no effect.

The transfer of any Time Interest shall operate to transfer to the new owner the interest of the prior owner in funds in the hands of the Agent and in Common Furnishings without further instrument of transfer.

9. Damage or Destruction. In the event of any damage or destruction to the Unit or the Common Furnishings, except as otherwise provided in this Supplemental Declaration or the Declaration of Expandable Condominium for Pointe Retreats - Phase I - Section I, the Agent shall forthwith cause such damage to be repaired and shall so apply any available insurance proceeds. If the damage is not covered by insurance, or if the available insurance proceeds are insufficient, the Agent shall assess and the Owners shall pay the cost thereof or deficiency in proportion to their undivided ownership interests in the Condominium, unless the damage was caused by the intentional or negligent act or omission of any Owner, his family, guests, invitees or lessees, in which event the cost of repair or deficiency shall be paid by such Owner.

In the event of any damage or destruction to the Project, the Agent shall attend any meeting of members called to determine whether to repair, restore or dissolve the Project, vote at any such meeting on behalf of the Owners and otherwise act on behalf of the Owners to provide for the repair and restoration of the Project; or, in the event the Project is dissolved, to administer the distribution of any and all proceeds of dissolution allocable to the Condominium.

Any proceeds allocable to the Condominium and payable to the Owners as the result of (i) dissolution or termination of the Project for any reason; (ii) any excess of insurance proceeds over the cost of repair or restoration; or (iii) any similar cause, not required to repair or restore the Unit or the Common Furnishings or any part thereof, or aid to compensate any one or more Owners for loss or damage to their individual person or property (in which case such distribution shall be with due regard to the loss or damage incurred), shall be distributed to the Owners in proportion to their respective undivided ownership interests in the Condominium. Any assessment properly levied against the Unit by the Homeowners Association for the purposes of repair or restoration of the Project shall be assessed against and paid by the Owners in proportion to their respective undivided ownership interests in the Condominium.

10. Restriction on Owners. Except as otherwise provided in this Supplemental Declaration by direction of the Agent, by express consent of all Owners, or required to prevent damage or injury to persons or



property in an emergency, no Owner shall make improvements, decorations or repairs to the Unit or the Common Furnishings or contracts so to do or subject the Unit or the Common Furnishings to any liens for the making of improvements, decorations or repairs. No Owner shall create or permit to exist any nuisance in the Unit or commit waste with respect to the Unit or Condominium, or permit anything to be done or kept in the Unit which would increase the rate of insurance upon the Unit or the Common Furnishings.

11. Enforcement of Restrictions. In the event that any Owner should fail to comply with any of the provisions of this Supplemental Declaration, the Agent or any other Owner or Owners may bring action for damages, or to enjoin the violation or specifically enforce the provisions of this Supplemental Declaration, or to enforce any statutory or contractual lien or lien provided herein, including foreclosure of any such lien and the appointment of a receiver for any Owner or take possession of the Time Interest of any Owner. In any such legal proceeding, the prevailing party shall be entitled to costs and reasonable attorneys' fees. All sums payable hereunder by any Owner shall bear interest at ten percent (10%) per annum from the due date, or, if advanced or incurred by any other Owner or by the Agent and provided herein to be repaid, from ten (10) days after repayment is requested.

The aforesaid remedies shall be cumulative and in addition to all other remedies which may be available at law or in equity; provided, however, that no breach of any provision hereof by any Owner or by Agent, or failure of any Owner or Agent to comply with any provision hereof, shall permit or empower any other Owner to terminate any such provision or excuse any such breach or failure, and each Owner shall continue to perform and comply with and hold his Time Interest subject to all of the provisions of this Supplemental Declaration, notwithstanding any such breach or failure.

12. Lien on Interests. Each Owner shall have a lien in the nature of a mortgage on the interest of each other Owner in the Condominium and Common Furnishings as security for the prompt and faithful performance by such other Owner of the obligations under this Supplemental Declaration and payment of costs of enforcement and reasonable attorneys' fees; provided, however, that as against any transferee, mortgagee or beneficiary of an Owner's interest acquiring all or any interest in such Owner's interest by deed, mortgage or deed of trust given by such Owner for valuable consideration and accepted by the transferee, mortgagee or beneficiary without notice of default in the payment or performance secured, no such lien shall be effective to secure any past due payment or performance in default at the time of recording such deed, mortgage or deed of trust except to the extent that notice of default in the payment or performance has been given at the time of recording such deed, mortgage or deed of trust. The lien herein created may be enforced by any Owner or the Agent, and the delinquent Owner's interest in the Condominium and Common Furnishings may be sold in accordance with the provisions of the laws of the State of Indiana, relating to mortgage foreclosures. The purchaser at any foreclosure sale shall obtain title

subject to the provisions of this Supplemental Declaration. Either the Agent or any Owner or Owners may bid at the foreclosure sale and may hold, lease, mortgage or convey any interest in the Condominium or Common Furnishings acquired at such sale. The aforesaid lien and right of foreclosure shall be in addition to and not in substitution for all other rights and remedies which the Owners or Agent may have hereunder.

13. Protection of Interests. No Owner shall permit his interest in the Condominium or Common Furnishings to be subject to any lien (other than the liens of current real property taxes and the current and future installments of special assessments), claim or charge, the enforcement of which may result in a sale or threatened sale of the interest of any other Owner in the Condominium or Common Furnishings or any part of any thereof, or in any interference with the use or enjoyment thereof by any other Owner; and in the event that the sale of the entire Condominium or Common Furnishings or the interest of any Owner or any part thereof, or the use and enjoyment of any thereof by any Owner be threatened by reason of any lien, claim or charge against the interest of any other Owner, or proceedings be instituted to affect any such sale or interference, any Owner or Owners acting on his or their own behalf or through the Agent, or the Agent acting on behalf of any one or more Owners, unless promptly indemnified to his or their satisfaction, may, but shall not be required to pay or compromise the lien, claim or charge without inquiry into the proper amount or validity thereof; and, in that event, the Owner whose interest was subject to such lien, claim or charge shall forthwith repay the amount so paid or expended, together with such reasonable attorneys' fees and related costs as he or they may have incurred.

No Owner shall permit his interest in any funds from time to time in the possession of the Agent to be subject to any attachment, lien, claim or charge or other legal process, and each shall promptly restore any funds held by the Agent in respect of his Time Interest to the extent depleted by reason of the assertion of any such attachment, lien, claim, charge or other legal process and reimburse the Agent, for all reasonable attorneys' fees or other costs incurred in respect thereof.

14. Existing Condominium Restrictions. Each Owner shall comply with and hold his Time Interest subject to the provisions of the Declaration of Expandable Condominium Pointe Retreats Phase I Section I (the "Condominium Restrictions") recorded on \_\_\_\_\_, 198\_\_\_\_, in Book \_\_\_\_\_, page \_\_\_\_\_, in the Office of the Recorder of Monroe County, Indiana, as heretofore and from time to time hereafter amended.

15. Termination. This Supplemental Declaration shall terminate and be of no further force and effect upon the expiration of sixty (60) years from the date of execution hereof, or upon termination of the Condominium Restrictions, whichever first occurs.

16. Notices. Notices provided for in this Supplemental Declaration shall be in writing and shall be deemed sufficiently given when delivered personally or when deposited in the United States mail

addressed to any Agent for delivery of notices, or, in the event of no such designation, at such Owner's last known address, or, if there be none, to the address of the Unit.

17. Severability and Rule Against Perpetuities. If any provision of this Supplemental Declaration shall be held invalid, it shall not affect the validity of the remainder of this Supplemental Declaration. If any provisions of this Supplemental Declaration would violate the Rule against Perpetuities or any other limitation on the duration of the provisions contained herein imposed by law, then such provision shall be deemed to remain in effect only for the maximum permissible period permitted by law or until twenty-one (21) years after the death of the last survivor of the now living descendants of Senator Edward M. Kennedy of Massachusetts, and of former Senator Robert Kennedy of New York, whichever is earlier.

18. Successors. The provisions of this Supplemental Declaration shall be binding upon all parties having or acquiring any right, title or interest in the Condominium or any part thereof and shall be for the benefit of each Owner and his heirs, successors and assigns. Each Owner (including Declarant) shall be fully discharged and relieved of liability on the covenants hereunder, insofar as the same relate to each Time Interest, upon ceasing to own any interest therein and paying all sums and performing all obligations hereunder in respect of such Time Interest, to the time his ownership interest terminated. Declarant shall not, however, be discharged and relieved of its obligations as Agent until such time as it shall resign or be replaced as Agent and have performed its obligations as Agent to the time of resignation or replacement.

19. No Exemption. No Owner may exempt himself from liability for any obligations set forth herein by any waiver of the use or enjoyment of the Unit or by any other action.

20. No Waiver. The failure to enforce any provision of this Supplemental Declaration shall not constitute a waiver of the right to enforce such provision thereafter.

21. Interpretation. The section titles at the beginning of each numbered section of this Supplemental Declaration are for convenience only and the words contained therein shall not be considered to expand, modify or aid in the interpretation, construction or meaning of this Supplemental Declaration. As used herein, the singular shall include the plural and the masculine or neuter gender shall include the other genders.

22. Amendment. This Supplemental Declaration may be amended by written instrument executed by Owners holding of record seventy-five percent (75%) or more of the undivided interest in the Condominium; provided, however, that no such amendment may affect or alter the right of any Owner exclusively to occupy the Unit, and as between Owners to

use and enjoy the Common Areas and Facilities of the Project, and the rights and easements appurtenant to the Unit, during the theretofore established Use Period or Periods set forth in an Original Deed to his interest unless such Owner shall expressly so consent. Subject to the foregoing provision, any amendment shall be binding upon every Owner and every Time Interest whether the burdens thereon are increased or decreased.

IN WITNESS WHEREOF, the undersigned has executed this Supplemental Declaration on the day and year first above set forth.

\_\_\_\_\_  
Ronald J. Killion

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MONROE )

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Ronald J. Killion, to me known to be being duly sworn upon his oath, who acknowledged the execution of the above and foregoing Supplemental Declaration of Time Share Covenants, Conditions and Restrictions.

WITNESS my hand and Notarial Seal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed  
Notary Public Residing in  
Monroe County, Indiana

My Commission Expires:  
  
\_\_\_\_\_