

STATE OF INDIANA  
OFFICE OF THE SECRETARY OF STATE

To Whom These Presents Come, Greeting:

CERTIFICATE OF INCORPORATION

BAY POINTE CO-OWNERS' ASSOCIATION, INC.

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

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

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

5th day of

NOVEMBER 1986

*Edwin J. Simcox*  
EDWIN J. SIMCOX, Secretary of State

By *Ramona Fairman*  
Deputy



FILED  
IND. SECRETARY OF STATE  
RECORDED  
NOV 5 1986

ARTICLES OF INCORPORATION

BAY POINTE CO-OWNERS' ASSOCIATION, INC. NOV 5 1986 4:48

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

ARTICLE I

Name

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

ARTICLE II

Purposes and Powers

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

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

11/04/86

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

Section 2.2. Non-Profit Purposes.

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

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

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

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

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

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

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

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

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

Section 2.4. Limitations on Powers.

(a) The Corporation shall not issue capital stock.

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

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

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

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

### ARTICLE III

#### Term of Existence

The Corporation shall have perpetual existence.

### ARTICLE IV

#### Resident Agent and Principal Office

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

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

### ARTICLE V

#### Membership

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

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

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

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

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

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

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

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

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

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



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

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

## ARTICLE VI

### Board of Directors

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

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

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

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

#### ARTICLE VII

##### Name and Address of Incorporator

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

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

#### ARTICLE VIII

##### Statement of Property

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

ARTICLE IX

Provisions for Regulation and Conduct  
Of The Affairs Of The Corporation

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

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

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

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

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

Section 9.3. Indemnification.

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

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

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

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

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

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

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

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

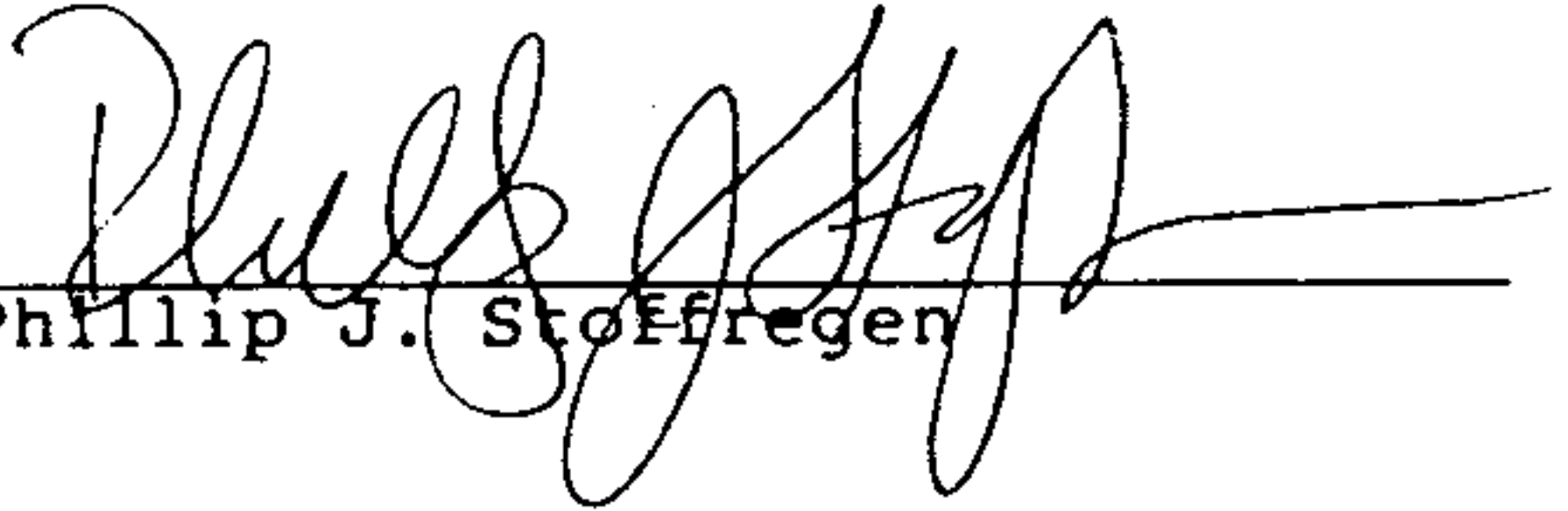
Section 9.5. By-Laws. The By-laws of the Corporation may be amended as set forth in the By-laws. Said By-laws may contain other provisions consistent with the laws of the State of Indiana, for the regulation and management of the affairs of the Corporation.

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

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

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

Dated this 4th day of November, 1986.

  
Phillip J. Stoffregen

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