

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS
FOR
NORTH POINTE SUBDIVISION
HEBRON, KENTUCKY**

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GROUP 2001
and GROUP 4388

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RESERVATION OF EASEMENTS FOR
NORTH POINTE SUBDIVISION**

THIS DECLARATION is made on the ____ day of January, 2003, by Arlinghaus Builders Inc., a Kentucky corporation, referred to herein as the Developer or Declarant.

WITNESS:

WHEREAS, Arlinghaus Builders Inc. is the owner of the real property described in Exhibit 1 and plans to develop that real estate into a single family subdivision known as North Pointe Subdivision; and has designed this Subdivision to create a planned residential community with common areas to benefit the residents of the community; and wishes to preserve the values and amenities in the subdivision; and to provide for maintenance of the common areas; and desires to subject the real property described in Exhibit 1 to all of the conditions, covenants, restrictions, easements, charges and liens set forth in this Declaration, all of which are for the benefit of the subdivision and the owners; and has formed the North Pointe Homeowners Association Inc., as a non-profit Kentucky Corporation, to be delegated and assigned the powers and duties of maintaining and administering the common areas, and enforcing the covenants and restrictions, and collecting the assessments, and performing the other powers and duties as detailed herein;

THEREFORE, Arlinghaus Builders Inc. hereby declares that all of the real property described in Exhibit 1 and any other property as may be added later and be subjected to these provisions pursuant to this Declaration, shall be sold and conveyed and owned and held subject to the conditions, covenants, restrictions, easements, charges and liens set forth in this Declaration and in any plat which includes any part of the subject Property. The above shall run with the land and be binding on all parties having any right, title, or interest in the Property, any lot or tract, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner.

ARTICLE I DEFINITIONS

- 1.1 Definitions. When used in this Declaration, the following words shall have the following meanings:

- 1.2 “Articles” and “Articles of Incorporation” shall mean the Articles of Incorporation of North Pointe Homeowners Association Inc., dated January 2, 2003, which were filed with the Secretary of State in Frankfort, Kentucky, as a non-profit corporation under the provisions of Kentucky laws, and as may be later amended. A copy of the Articles are attached in Exhibit 2 and made a part hereof.

- 1.3 “Association” shall refer to the North Pointe Homeowners Association, Inc., its successors and assigns.

- 1.4 "Bylaws" shall mean the bylaws of the Association as originally drawn and as may be amended from time to time. A copy of the bylaws is attached to and made a part of these Declarations and are shown as Exhibit 3.
- 1.5 "North Pointe Subdivision" shall refer to the single-family subdivision located on the real property described in Exhibit 1 and on any real property as may later be annexed pursuant to this Declaration. Some of the property may be developed as condominiums, and if so, it shall be excluded from these Declarations and shall have new and separate Declarations.
- 1.6 "Board" and "Board of Directors" shall mean the Board of Directors of the North Pointe Homeowners Association Inc. As provided in the Articles of Incorporation and bylaws of the Association. The above terms can be used interchangeably.
- 1.7 "Declarant" shall refer to the Developer - Arlinghaus Builders Inc., a Kentucky corporation, its successors and assigns.
- 1.8 "Developer" shall refer to Arlinghaus Builders Inc., a Kentucky corporation. It shall also include the successors and assigns of Arlinghaus if such successors or assigns should acquire one or more developed lots from Arlinghaus for resale to an owner or to construct improvements on that lot or lots for resale to another owner. Any assignee shall be a "Developer" for purposes of this Declaration only as to the lots which he has acquired for the purpose of resale or for the purpose of constructing improvements for resale to another owner.
- 1.9 "Member" shall refer to each of the owners who are members of the Association as provided in Article IV.
- 1.10 "Owner" shall refer to the record owner of the fee simple title to any lot which is a part of the Property, but shall not include someone having just a security interest in the lot. Owner shall include Land Contract holders. Owners can be individuals, corporations, partnerships, government agencies, or any other legal entity authorized under Kentucky law. If the property is held in more than one name, the owner shall be considered as one for voting, payment of fees, and other purposes under this Declaration.
- 1.11 "Trustee" shall refer to any person serving in the capacity as a Trustee of the Association. A Director may be referred to as a Trustee.
- 1.12 "Development Period" shall include the time from the day this Declaration is recorded until: December 31, 2015, or the day on which the Developer no longer owns any of the Property, whichever of the above occurs first.
- 1.13 "Lot" shall refer to a lot or plat of land as shown on a recorded subdivision plat of part of the Property, or a re-subdivision thereof. Lot shall not include Common Areas.
- 1.14 "Common Areas" shall refer to the real property, including green space or landscape easements, and any interest therein and improvements located thereon, for the benefit

and use and enjoyment of the members of the Association. Common Areas shall include any areas that have been set aside by the Developer on a recorded plat as Common Areas. The Common Areas include but are not limited to common areas, green space, greenbelt areas, easement areas, entryways and monuments, landscape areas including mounds, road islands, lakes and ponds, and the undedicated portion of any road or street conveyed to the Association. Common areas which may be maintained shall include the dedicated area of any street or roadway within or immediately adjacent to the subdivision.

- 1.15 "Property" shall refer to the real property described in Exhibit 1, and any additional property as may later be annexed pursuant to this Declaration, less any land the Developer decides to not include.

ARTICLE II PROPERTY

- 2.1 Property. The real property which is subject to this Declaration is located near Hebron, in Boone County, Kentucky, and is more particularly described in Exhibit 1 attached to and made a part of this Declaration. The property shall be developed as a single family subdivision known as North Pointe Subdivision. Some of the property may be developed as condominiums, and if so, it shall be excluded from these Declarations and shall have new and separate Declarations. All lots within this subdivision shall be purchased, owned, held, sold, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the provisions contained in this Declaration. However, any land the Developer decides to use as a park area shall not be subject to these provisions.
- 2.2 Additions. Additional property may be annexed to the property described in Exhibit 1. The Declarant Arlinghaus may annex such property by amendment to this Declaration without the consent of the other members of the Association. After Arlinghaus has sold all of the lots in this subdivision, then any additional property may be annexed only with the approval of at least 51% percent of the members of the Association. Any additional property so annexed must be located reasonably close to the initial developed Property.
- 2.3 Amend Declarations. Any additions to the original development shall be made by recording an amendment to this Declaration with the Clerk of Boone County, Kentucky, which shall automatically extend the covenants and restrictions of this Declaration (as may be amended) to such annexed property. The supplementary Declarations may also include any additional covenants, conditions, restrictions, easements, etc. as may seem appropriate for the purpose of completing the development of the property.
- 2.4 Common Areas. The Developer may convey any property or interest in property, along with any structure, improvement, facility, fixture, equipment and/or furnishings located thereon, to the Association. The consideration can be a gift or a reasonable and appropriate amount. The Board of Directors of the Association shall consider the conveyance and consideration, if any, and shall accept or deny the property. Upon acceptance of the property by the Board, the property shall be considered as Common Area.

- 2.5 Facilities. The Developer may convey to the Association for nominal or reasonable consideration, community facilities which have been constructed for the benefit of the residents of North Pointe Subdivision. The Board of Directors of the Association shall consider the conveyance and requested consideration, if any, and shall accept or deny the facilities. Upon acceptance of the conveyance by the Board, the facilities conveyed shall be held for the benefit of the owners of lots in North Pointe Subdivision. The costs for the maintenance, use and operation of such facilities shall be funded by the Annual Assessments as set forth in this Declaration.
- 2.6 Time. The Developer does not guarantee when the community facilities will be constructed by it. In determining when or whether to construct any community facilities, the Developer may consider the economic feasibility to do so, and the availability of sufficient funds for the construction, operation, maintenance and repair of the facilities.

ARTICLE III PROPERTY RIGHTS

- 3.1 Right of Enjoyment. Each owner and resident, whether owner or tenant, of North Pointe Subdivision, shall have a right to an easement for the enjoyment of the Common Areas, and such right shall be appurtenant to and shall pass with the title to every lot, subject to the following:
- 3.1.1 The right of the Association to borrow money for the purpose of purchasing, expanding, renovating, maintaining or improving the Common Areas or facilities.
- 3.1.2 The right of the Association to dedicate all or any part of the Common Area to any public agency for purposes consistent with this Declaration.
- 3.1.3 The right of the Developer or the Association to grant utility easements, greenbelt easements, sign easements or road easements over the common Areas.
- 3.2 Delegation. The owners may delegate their rights of enjoyment in and use of the Common Areas and facilities to the members of his or her family, their guests, and their tenants who reside on the property within the Subdivision.
- 3.3 Title to Common Areas. The title to the Common Area shall be conveyed to the Association in fee simple, free and clear of liens and encumbrances. However, the Developer can maintain reasonable and necessary easements and rights of way for ingress and egress across the Common Areas for the purpose of development of the balance of Developer's Property. The Developer's rights shall not unreasonably interfere with the owner's enjoyment of the common areas.
- 3.4 Landscape and Sign Easements. Some of the lots in North Pointe Subdivision may be subject to Landscape or Sign Easements. These Easements are for the benefit of the Developer and the Association and the members and are for the purpose of providing access to maintain landscaping and signs installed by the Developer or the Association

in connection with the development of the Subdivision. Only the Developer, the Association or the owner on whose lot is situated a Landscape or Sign Easement, shall have access to, or enter onto, a Landscape or Sign Easement area.

ARTICLE IV MEMBERSHIP AND VOTING

- 4.1 **Members.** Every lot or tract owner is a member of the Association, and the membership rights are appurtenant to ownership of the lot. During the Development Period, there shall be Class A members who consist of all owners except for the Developer, and Class B member who is the Developer. When the Class B membership terminates according to the bylaws and this Declaration, then the Developer is a Class A member for each lot then owned by it.
- 4.2 **Voting Members.** There shall be 2 Classes of voting members, Class A and Class B.
- 4.2.1 Class A. Except as otherwise provided, each person, group or legal entity who is an owner of the fee simple interest in any lot which is subject to assessment by the Association shall be a Class A member of the Association. Class A members shall be entitled to one vote for each lot in which they hold the interest required for membership.
- 4.2.2 Class B. Class B member shall be the Developer who is entitled to 5 votes for each lot or planned lot in which it holds the fee simple interest as required for membership. Planned lot shall refer to the lots as shown on the Preliminary Plat of this subdivision as recorded with the Boone County Planning Commission, and any other lots which may be added to this subdivision by newly annexed property and as shown by other Preliminary Plats then recorded with the Planning Commission.
- 4.2.3 Class B membership shall terminate as provided in the bylaws, Articles, and this Declaration. When the Class B membership terminates, any Developer which holds a fee simple interest to any lots shall then be entitled to the voting and all other rights of a Class A member.
- 4.3 **Multiple Owners.** If more than one person, group, or legal entity is the owner of a fee simple interest in a lot, then the vote for that lot shall be exercised as those owners can determine themselves. The Association shall not determine or interfere with their voting procedures. However, only one vote can be cast for any one lot.

ARTICLE V ASSESSMENTS

- 5.1 **Covenant.** The Developer and each person, group, or legal entity who is an owner of a lot in North Pointe Subdivision, covenants and agrees to pay to the Association the Annual Assessments and Special Assessments. This agreement shall take effect upon the acceptance of the deed or Contract for the lot, whether or not it is directly expressed in the deed, Contract, or other conveyance.

- 5.2 Obligation. All assessments shall be established and collected as provided herein. All assessments, together with interest and costs of collection (including court costs and reasonable attorney's fees) as provided herein, shall be a continuing lien upon the property against which such assessment is made. Each assessment, together with interest and cost of collection, shall also be the personal obligation of the person, group or legal entity who was the owner of the lot at the time the assessment fell due. This applies to Annual and Special Assessments.
- 5.3 Annual Assessment. To carry out the purposes described below, an Assessment shall be levied each year by the Association. The Annual Assessments are to provide for the current expenses and an adequate reserve fund for future use. The purposes of the funds received from the Annual Assessments are: to promote the health, welfare and safety of the residents of this subdivision; to protect, advance and promote the environment within the Property; to preserve the aesthetics and scenic qualities of the development; for scenic enjoyment; to promote and maintain entrance ways and community facilities situated in North Pointe Subdivision; for improvement, expansion and maintenance of the Common Areas, entrance ways or community facilities; for payment of taxes and insurance; for repairs, replacements and additions; for the cost of labor, equipment, and materials, management and supervision; for the maintenance, repair, improvement and landscaping of entrance ways to the community, adjoining roads, lakes or other areas, whether public or private, which may affect the recreation, scenic enjoyment, health, welfare and safety of the residents even though not owned by the Association.
- 5.4 Beginning Date. The Annual Assessment shall begin to accrue for each lot on the day of the recording of the plat. The first assessment for each lot owner shall be made for the balance of the calendar year and shall become due and payable and a lien on the above date. The following Assessments subsequent to the first Annual Assessment for each lot shall become a lien on January 1 of each year. Any Special Assessments shall become a lien as of the date determined by the Board. No Notice of Lien needs to be recorded to establish the validity of any lien, and this Declaration shall be the Notice of all subsequent liens.
- 5.5 Manner of Assessment. The Board shall determine the amount, manner and schedule of payments for the assessments. The Board shall periodically fix the amount of the assessment against each lot for each assessment period. Other than as explained in Article 5.10, each lot shall be assessed equally regardless of the size of the lot or value of the house on the lot. The Board shall make reasonable efforts to fix the amount of an assessment against the lots for each assessment period at least 30 days in advance of the assessment period. The Board shall also keep a roster of the lots and the applicable assessments which shall be kept in the office of the association and shall be open for inspection by any owner upon reasonable notice to the Board. Written notice of billing for the assessment shall be sent to the owner of each lot prior to the due date of the assessment. Common areas are not lots and are not to be assessed.
- 5.6 Initial Amount. The first annual assessment for the year 2003 for lots in North Pointe

Subdivision for the purposes provided above shall be \$250.00 per lot. Until the recreational facilities are in place in the subdivision, the actual amount due shall be 50% of the annual assessment for that period of time. When the recreational facilities are in place and operating and open to the residents of the subdivision, the payment shall automatically be 100% of the assessment amount.

- 5.7 Increases. The amount of the Annual Assessment for each lot can increase up to 10% percent per year, in addition to the maximum amount allowed for the previous year (whether charged or not). Prior to levying any increase in the assessment, the Board must vote for the increase in assessment. If so voted, the increase will be for the following year, not the same year as the vote was taken. The Annual Assessment can be increased greater than the 10% as described above, only after a majority of the members who vote approve such increase. The assessments until the recreational facilities are in place and usable shall be the actual assessment for purposes of the increase. The 50% actually owed is not the assessment amount. If the Board does not meet or cannot get a majority vote to change the assessment amount, then it shall automatically remain the same as the prior year.
- 5.8 Billing. The annual assessment may be billed in advance on either a monthly, quarterly, semi-annual or annual basis, as determined by the Board.
- 5.9 Special Assessments. In addition to the Annual Assessments authorized by this Declaration, the Association is authorized to levy a Special Assessment, applicable for that year only, to pay all or part of the cost of any maintenance, construction, reconstruction, repair, or replacement of any improvement located in the Common Areas, entry ways, or the facilities situated in North Pointe Subdivision, if the funds to pay those costs have not otherwise been provided for as part of the Annual Assessment. Any Special Assessment shall have the approval of 51% of the members who vote. Any Special Assessments levied by the Association shall be fixed at a uniform rate based upon the number of lots. All money received by the Association from the Special Assessment shall be held in trust by the Association for the benefit of the members to be used solely for the purposes described for the Special Assessment. The assessment may be billed on a monthly, quarterly, semi-annual or annual basis as determined by the Board.
- 5.10 Assessment of Developer. Unless otherwise provided in this Declaration, the Articles of Incorporation, or the bylaws, the Developer shall pay for its lots which are recorded but not yet sold to other parties, an amount equal to 10% of the Assessment, annual or special, which the Association has levied. These payments shall be due at the end of the assessment year, even though the lien date is January 1. If a lot closes after November 24 of any year, the new owner shall pay his prorated share of the annual assessment, and the Developer shall pay the difference, so the total amount for that year owed equals 10% of the assessment amount. The provisions of this Section shall not apply to any lots held by the Developer for rental or that are being occupied as a residence. If so, the Developer shall pay the full amount of the assessments.

- 5.11 Non-Payment. Any assessment levied which is not paid on the date when due shall be delinquent and shall, together with interest and costs of collection, become a continuing lien on the property. This lien shall run with the land and also shall be a personal obligation of the owner, their heirs, successors, devisees, personal representatives and assigns. The personal obligation of the owner to pay any assessment shall remain his personal obligation for the period permitted under Kentucky law, and shall not pass to his successors unless expressly assumed by them.
- 5.12 Interest and Costs. If any assessment is not paid within 15 days after the due date, then the assessment shall accrue interest at the rate of 10% per annum, compounded monthly, from the date originally due until paid, and the Association may file a lien against the property, and may bring an action against the owner obligated to pay, and may foreclose the lien against the property. If any of the above occur, interest, actual court costs paid and reasonable attorney fees shall be added to the amount of the assessment. Owner cannot waive or otherwise escape the obligation to pay the assessments by non-use of the Common Areas or facilities or abandonment of his lot.
- 5.13 Late Charges. In addition to the interest provided above, the Board may, by majority vote, establish a reasonable late charge to be paid for any annual or special assessment that is not paid within 15 days after the date due. However, any late charge shall not exceed 20% of the amount of the assessment. This shall be in addition to any interest, court costs, and attorney fees otherwise incurred.
- 5.14 Subordination of Lien. The lien of these assessments are subordinate to the lien of any first mortgage on any lot. Sale or transfer of any lot shall not affect the assessment lien. However, any first mortgagee who obtains title to a lot through foreclosure or other means shall be liable for the unpaid assessments and charges accrued, the same as any other purchaser of the lot, according to Kentucky law.
- 5.15 Assessment Statements. The Association shall, upon reasonable request at reasonable times, furnish to the owner or his agent or financier, or to a prospective Purchaser of their financier, a statement in writing signed by an officer or other agent of the Association, setting forth the payment status of an assessment. A reasonable charge may be levied by the Association for each statement so delivered.

ARTICLE VI INSURANCE

- 6.1 Liability Insurance. The Association shall maintain a Comprehensive liability insurance policy covering the Common Areas and facilities owned by the Association, which insure the Association, Directors, Officers, owners and members or their families, tenants and occupants in an amount of not less than \$500,000 per occurrence for personal injury and/or property damage. This insurance shall include protection against risks as may be normally covered for a similar type development as determined by the Board.
- 6.2 Casualty Insurance. The Association shall maintain wind, fire, lightning and extended

coverage or similar insurance in an amount of not less than the replacement cost of the facilities and structures located on property owned by the Association. This insurance shall include protection against risks as may be normally covered for a similar type development as determined by the Board. The insurance proceeds shall be payable to the Association and used to restore or replace any Common Area structure or facility damaged or destroyed by any peril covered by the insurance.

6.3 Other Insurance. The Association may maintain Directors and Officers liability insurance and any other insurance as the Board may determine is necessary or desirable. The Association may also obtain insurance for any person handling funds of the Association if the Board so determines.

6.4 Insufficient Insurance. If any structure, improvement, facilities, or any part thereof are damaged or destroyed as a result of any accident, cause or peril, and if the insurance proceeds are not sufficient to pay the cost of repair, restoration or reconstruction; then the Association may advance the costs to do that repair, renovation, or replacement, in excess of the available insurance proceeds. The funds advanced by the Association shall come from the reserves, the annual assessments, or a Special Assessment. The Board shall determine which of the above actions to take under this Section.

ARTICLE VII ARCHITECTURAL CONTROL

7.1 Approval. The Developer has the right to choose all aspects of the construction of any homes, facilities, improvements to Common Areas, or other structures built by the Developer, without prior approval of the Board or Committee. Any Builder approved by the Developer can build homes and normal appurtenances thereto in the subdivision without prior approval of the Board or Committee. Other than the above, any building, addition, fence, wall, pool, deck, gazebo, or other structure shall not be started, built or maintained on any lot in the subdivision until the plans and specifications shall be first submitted to and approved by the Board or by an Architectural Review Committee if one is appointed by the Board. Such plans and specifications shall show the nature, kind, shape, height, materials and location of the improvements planned to be made. The plans and specifications shall be reviewed by the board or Committee as to harmony of external design and location in relation to surrounding lots and structures and topography in accordance with the requirements set forth herein. The Board or Committee shall make reasonable attempts to review and either approve or disapprove the plans and specifications within 45 days after submitted. Except as otherwise provided herein or unless the Board grants itself an extension for a good reason, if a decision is not made within that time period by the Board or Committee, it shall be considered as approved and this Article shall be deemed complied with.

7.2 Requirements. The following requirements are applicable to all lots in North Pointe Subdivision, except for lots owned by the Developer, except as otherwise approved by the Board, or except as otherwise noted.

7.2.1 Single Family. Any home to be built, added to, altered, placed or permitted to remain on

any lot shall be one detached single-family residential dwelling with a garage suitable for parking at least one car, which is to be attached to the dwelling. However, this shall not exclude condominiums which may be built on part of this property.

- 7.2.2 Common Area. Except for improvements by the Developer during the development of the Property and building of the home, or otherwise as authorized by the Board, no improvement of any kind shall be built, erected, altered, placed or permitted to remain in the Common Area. Also, the improvements constructed by the Developer during the development of the Property and later as approved by the Board, shall not be removed from the Common Area without the prior written consent of the Developer or the Board.
- 7.2.3 House Placement. The location of each residence to be built shall be decided after considering the general grade and drainage patterns existing at the time of recording of the final plat. Existing grades at lot lines shall not be unreasonably altered without the consent of the Developer.
- 7.2.4 Storm Water. Storm water shall be disposed of in accordance with drainage plans established by the Developer, by the Planning Commission or other government agency, or by the Association.
- 7.2.5 Driveways. Every driveway shall be surfaced with concrete, asphalt or similar substance.
- 7.2.6 Grading. Final grading of all disturbed areas of the yard of the residence must be completed, and those areas must be seeded in grass within 6 months of final construction of the home, weather permitting.
- 7.2.7 Trees. Each lot owner shall try to retain as many trees as is reasonably practical.
- 7.2.8 Fences. Fences, walls, including the use of hedges or other plants as a barrier, can be built, placed or remain upon a lot or open-space easement only after obtaining prior approval of the Board. Fences shall not be placed on any lot nearer to the street than the rear line of the residence located on the lot. On a corner lot, the fence shall not be closer to the side street than the shortest distance between the residence and the side street. Unless otherwise approved by the Board, fences shall be constructed of a three or four board, two or three rail split rail, rustic rail, dark colored chain link or wire mesh, hedge or other growing plants used as a fence, or other material approved by the Developer if it still owns the lot, or approved by the Board. Fences shall not exceed 4 feet in height except within 15 feet of the rear of the house where a fence up to 7 feet in height is permitted. Retaining walls are excluded from the above requirements, if reasonably required for use as a retaining wall. Fences shall not be constructed in a landscape or sign easement. These restrictions do not apply to fences enclosing the recreation area owned by the Association, or to decorative fences which may be installed by the Developer.
- 7.2.9 Carpeting. No exterior carpeting is allowed on the front of any home or if it is visible from any street.

- 7.2.10 Antennas. Television antennas, radio antennas, CB radio antennas and satellite dishes are permitted on lots only after obtaining a variance in accordance with the provisions of this Declaration. They should be placed on the home if possible, and in the side or rear of the houses or yard, and be hidden as much as reasonably possible. Antennas shall not extend more than 10 feet above the roof line.
- 7.2.11 Solar Units. Roof mounted solar units are not permitted unless a variance is obtained.
- 7.2.12 Air Conditioning Equipment. Air conditioning equipment and heat pumps shall be located on the side or rear of the home unless a variance is obtained.
- 7.2.13 Awnings. Metal and plastic awnings are prohibited. Canvas awnings may be used on a lot only after obtaining prior approval of the Developer or the Association.
- 7.2.14 Lighting. Exterior lights in excess of 250 watts are prohibited, except for street lights installed by the Developer, by the Association, by a government agency, or by a utility company.
- 7.3 Completion. Construction of any residence or building on each lot shall be completed within 18 months from the date construction is started.
- 7.4 Consolidation. After the initial sale by the Developer, the lots shall not be re-subdivided or consolidated with other lots unless a variance is first obtained in accordance with the provisions of this Declaration.
- 7.5 Zoning and Building Code. Any and all improvements shall be constructed in accordance with and subject to applicable zoning regulations and building codes. If a variance is granted by the Board for any item that requires a variance, that approval by the Board does not mean that the applicable zoning or building codes have been reviewed by the Board.
- 7.6 Variances. To avoid unnecessary hardship and/or overcome difficulties in the application and interpretation of some provisions of the Declaration, the Board has the authority to grant reasonable variances from the provisions contained herein. As long as the Developer owns at least one lot in the subdivision, then he is exempt from the requirement to obtain variances from these provisions, but only concerning lots still owned by the Developer. The variances shall not materially injure or adversely affect any other lot or owner or occupant, if at all possible. No variance granted pursuant to this authority shall constitute a waiver of any other provision of the Declaration or be automatically applied to any other party or other part of the Property unless otherwise so stated in the variance. No variance may be granted to permit anything that is prohibited by law.

ARTICLE VIII RESTRICTIONS

- 8.1 Restrictions. All lots in North Pointe Subdivision are subject to the restrictions which follow. For any prohibited restrictions, the Board has the authority to grant a variance after application and fair consideration of the reasons for the variance request, if the Board feels it is best to grant such variance, as explained in Section 7.6.
- 8.2 Purpose. All lots shall be used for residential purposes and normal and reasonable uses related thereto. The Developer and other builders can build model homes, use unsold residences as model homes, market homes, or sales offices. And the Developer and other builders can build construction sites, install trailers, and/or offices as they deem necessary or desirable for construction of homes within this subdivision.
- 8.3 Nuisance. No obnoxious or offensive activity is permitted on any lot, and owners and occupants shall not engage in any activity that interfere with the quiet enjoyment, comfort and health of the occupants of adjacent lots. This paragraph shall not apply to lots owned by the Developer.
- 8.4 Animals. No animals, livestock or poultry shall be raised, bred or kept on any lot, except normal household pets. However, even those animals shall not be kept, bred or maintained for commercial purposes.
- 8.5 Signs. No signs shall be displayed on any lot except for the following: 1 professional sign of not more than 2 square feet, 1 sign of not more than 9 square feet advertising the property for sale, and signs used by the Developer to advertise the property for sale. The signs may be permitted if they meet all zoning regulations and only after a variance for that sign is obtained from the Board.
- 8.6 Trash. Burning of trash and accumulation or storage of garbage, litter, building materials or trash is not permitted on any lot for an unreasonable time. Trash and garbage shall be placed in sanitary garbage cans or containers and shall not be permitted to remain in view of the street except within 24 hours before and after the approximate time of trash collection. This paragraph shall not apply to lots or property owned by the Developer or Builders.
- 8.7 Prohibited Structures. No temporary structure, barn, tent, trailer, storage shed, outbuilding, free standing greenhouse, or other structure shall be built or remain upon a lot. However, a storage building may be built in the area to the immediate rear of the house within 12 feet of the house as long as it is attached to the house and constructed of a material acceptable to the Developer if the Developer still owns the lot, or to the Board. Other accessory structures may be permitted only after approved by the Board in accordance with this Declaration. This paragraph shall not apply to lots owned by the Developer or Builders. Decks and gazebos are not considered outbuildings.
- 8.8 Maintenance. Every lot and house in the subdivision shall be maintained by the owner in a reasonable manner according to general standards of maintenance prevailing

throughout the community. All landscaping shall be maintained in reasonably good condition. Every lot and the area within the lots designated as open-space easements or landscape or sign easements on such lot, shall be kept free of debris and clutter and shall be kept reasonably mowed and trimmed. This does not apply to lots owned by a Developer or Builder and held for sale. None of the lot owners abutting North Pointe Boulevard shall remove or permit to be removed any of the berm or plants unless they are replaced with similar materials which provide similar screening.

- 8.9 Vehicles, Boats, Trailers. Trucks exceeding 3/4 ton, recreational vehicles, motor homes, campers, boats, and travel trailers shall not be parked or stored on any lot in excess of 3 days during any calendar month. Also, trucks up to one ton capacity can be parked or stored on lots, as long as the style of the truck is that of a pickup truck and not a flatbed truck, dump truck, or panel truck. However, they can be kept in any enclosed area or garage, or parked within 15 feet of the rear of the home if that is out of sight from the street. Buses, delivery vans, mobile homes, and heavy equipment are not permitted to be stored or parked on the lot. No inoperable vehicle shall be stored outside on any lot for a period in excess of 1 week. This paragraph shall not apply to any lots owned by a Developer or builder and held for sale.
- 8.10 Yard Sales. Owners and residents shall not hold more than 4 garage or yard sales on their lot during any year.
- 8.11 Obstruction of Easements. No building, deck, structure, plant or other material other than driveways and sidewalks are permitted to be placed or remain on any lot which may damage or interfere with any easement or with the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any storm water drainage in the easement area. For each lot, the easement area and all of the improvements in the easement area shall be maintained by the owner of that lot, except for the improvements for which a public agency, utility company or the association is responsible. Unless otherwise designated on the plats, a 10 foot wide surface drainage easement shall exist along all lot lines, the lot line being the center line of the easements, which easement extends 5 feet from each lot line.

SECTION IX COMMITTEES

- 9.1 Finance Committee. The Board of Directors may appoint a Finance Committee consisting of not more than 3 members of the Association. This committee shall prepare a recommended annual budget of the Association for submission to the board, shall review and make recommendations concerning the financial condition of the Association, shall make recommendations to the Board concerning the amount of the Annual Assessment to be levied, and shall make recommendations to the Board concerning the needs, repairs and monetary requirements for the common Areas and any facilities owned by the Association.
- 9.2 Maintenance Committee. The Board of Directors may appoint a Maintenance committee consisting of not more than 3 members of the Association. This Committee shall make

recommendations to the Board concerning the structural condition, maintenance, needs, repairs, improvements, or additions to the facilities and common areas owned by the Association.

- 9.3 Landscaping Committee. The Board of directors may appoint a Landscaping Committee consisting of not more than 3 members of the Association. This Committee shall make recommendations to the Board concerning the landscaping, plants, flowers, maintenance, replanting, needs, repairs, improvements, or additions to the common areas owned by the Association.
- 9.4 Nominating Committee. The Board of Directors may appoint a Nomination Committee consisting of not more than 3 members of the Association. The Nominating Committee (if so established) shall consist of a Chairman, who shall be a member of the Board of Directors, and two members of the Corporation. The Nominating Committee shall be appointed by the Board of Directors at least 30 days prior to the annual meeting of the members, to serve until the close of the next annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall reasonably determine.
- 9.5 Architectural Committee. The Board of Directors may appoint an Architectural Review Committee consisting of not more than 3 members of the Association. This Committee shall review all applications for any type of variance as described in this Declaration, and shall then make recommendations to the Board concerning the approval or disapproval of such requests. The Board shall review all recommendations of this Committee and shall affirm or deny the recommendation. The Board's decision shall be the final decision. If the Committee or Board take no action within the time allocated in Section 7.1, then the application shall be considered as approved.
- 9.6 Other Committees. The Board may appoint other Committees if it sees a need to do so, with duties as the Board may determine.

ARTICLE X LAKES

- 10.1 Access. Several of the lots in North Pointe Subdivision are subject to Easements for access to the lakes and ponds in the subdivision. These Easements may or may not be on the final recorded plats of the subdivision. They are for the benefit of the Developer and the Association and the members. The purposes of these easements are to provide reasonable access to the lakes, ponds, and storm retention areas in the Subdivision, to allow the Developer and the Association and their successors to control algae, weeds, and other growth on or near these areas, and perform other normal and reasonable maintenance on or near these areas. No one other than the Developer, the Association, public agencies, utility companies, or the owner on whose lot is situated on the Easement, shall have permission to be on the Access Easement area. If not shown on the Plat, these easements shall be located 5 feet along each side of each lot line on the lots adjacent to the above described areas, and also extending out 10 feet from the edge of the lake, pond or storm retention areas, at the high water level.

- 10.2 Maintenance. If a public agency or utility does not assume the maintenance of the lakes, ponds, and storm retention areas, then the Association may be responsible for such maintenance within North Pointe Subdivision. The owner of a lot on which is situated all or any part of a lake, pond or storm retention area, is responsible for the care and maintenance of the area immediately adjacent to the lake, pond, or storm retention area. Owners must obtain permission from the Board before any dock or other structure is built on or adjacent to such lake or pond. If an owner does not maintain the area immediately adjacent to such lake, pond, or storm water retention area to a reasonable degree, the Association may do so, and assess the owner for the reasonable and actual cost. Before any maintenance is done, unless an emergency exists, the Association shall make reasonable attempts to notify the owner of such planned maintenance and the estimated cost thereof. The Assessment shall be a lien on the owner's lot to the same extent as other liens provided for herein.

ARTICLE XI MISCELLANEOUS

- 11.1 Duration. Except as otherwise provided and except where permanent easements or other rights or interest are created, all of the provisions of this Declaration shall run with the land and bind the owners of the land and the land itself, and shall inure to the benefit of and be enforceable by the Association or by any of the members or lot owners, their agents, legal representatives, heirs, successors and assigns, for 20 years from the date of recording this Declaration. After 20 years, the Declaration and all of the terms and conditions and rights and duties shall automatically extend for successive periods of 10 years in perpetuity, unless 75 % of the members entitled to vote, agree to terminate the Declaration. In such event, a written document must be signed by 75% of the members then entitled to vote, and that document must be recorded in the Boone County Clerk's office, and all other legal requirements for termination of a Corporation and this Association must be met.
- 11.2 Amendment. This Declaration can be amended as follows.
- 11.2.1 Developer. The Developer reserves the right and power to amend this Declaration to the degree necessary to conform to any requirements imposed or requested by any governmental agency, public authority, financial institution, or similar agency; to annex additional property to the terms of this Declaration; to the extent necessary to enable the Developer to meet any other reasonable need or requirement to complete the development of the Property and sell the lots or homes; or to make mortgages on any of the lots. Such amendments do not require the approval of the other lot owners, and each lot owner by acceptance of a deed to any lot automatically consents to such amendments which shall run with the title to the lot. Any such amendments are irrevocable except by Developer as long as the Developer still holds title to any lots in the subdivision or December 31, 2015, whichever occurs first. Any amendment so adopted by the Developer must be recorded and shall take effect on the date recorded.
- 11.2.2 Member. Except as otherwise provided, this Declaration may be amended by an instrument approved and executed by persons or entities entitled to exercise 66% of the

voting power of the Association. However, Developer's rights may not be amended or altered without Developer's prior written consent. Any amendment so adopted by the members must be recorded and shall take effect on the date record.

- 11.3 Liability. Nothing in the Articles, bylaws, this Declaration, regulations of the Association, or any rules or regulations adopted pursuant to any of the above, shall impose personal liability on any member of the Board of Directors or any Officer of the Association acting in such capacity, for the maintenance, repair or replacement of any part of the Common Areas or any facilities, or allow a cause of action against any of them. However, they may be liable for damages resulting from their personal willful omissions or misconduct or criminal acts. Each person who becomes an owner or member hereby releases and discharges the above Director or Officer from all liability for injury or damages to that member or owner or family or guests or to their property, and agrees to not initiate any legal proceedings against any such person or persons unless such person is covered by insurance, and in such event the amount of recovery shall be limited to the amount of insurance.
- 11.4 Non-Liability. The Developer and its agents, employees, representatives, successors or assigns shall not be liable for any claim arising out of actions performed pursuant to this Declaration or the bylaws, whether the claims have been asserted by an owner, member, occupant, guests, the Association, or by any personal or entity claiming through them. The above exclusion of liability includes all claims for injuries to person or property, as a result of repair or lack thereof, by reason of any act or neglect of the Association or other person or agents, or by reason of any real or personal property located on or near the Property, or as a result of furnishing or the failure to furnish or disrepair of any utility services (heat, air, electricity, gas, water, sewage, cable, street lights, etc.), except as provided by any written warranty provided by the Developer to an owner or to the Association.
- 11.5 Notices. Any notices to be sent to any member or owner under this Declaration shall be considered to have been properly sent when mailed, by regular first class mail, postage prepaid, to the last known address of the person who appears as member or owner on the records of the Association at the time of such mailing. If the last known address is not known by the Association, then the address of the lot which is owned or occupied by that member shall be considered the last known address.
- 11.6 Enforcement. Enforcement of the covenants and restrictions contained in this Declaration shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenants or restrictions, either to restrain or to stop the violation; or to recover damages; and against the land to enforce any lien created by these covenants; and against the owners or members to collect on any Judgements. The failure by the Association or any owner to enforce any covenant or restriction contained in this Declaration shall not be considered a waiver of the right to do so at any later date.
- 11.7 Severability. Invalidation of any one or part of these covenants or restrictions shall not

affect any other provision contained herein, and the balance of this Declaration shall remain in full force and effect.

- 11.8 Conflicts. In case there is any conflict between this Declaration and the bylaws, this Declaration shall control. In case there is any conflict between the Articles and this Declaration, the Articles shall control.
- 11.9 Nonexclusive. Some lots in this subdivision may be subject to other restrictions which may have in the past or in the future be established for only that group of lots and which might not be established for the entire subdivision.
- 11.10 Condemnation. If any Common Area or any Association owned facilities or any portion are condemned or taken by eminent domain, or otherwise sought to be acquired by any government agency or condemning authority, the proceeds of any award or settlement shall be paid to the Association for repair, replacement, purchase of different assets, or to be used for the common benefit of the Association and its members as the Board determines in its discretion.
- 11.11 Management Contracts. The Association may delegate all or any part of its right, duties and responsibilities to a manager or managing agent. Any management Contract shall not be for a period in excess of 5 years and shall provide for termination by either party without cause with at least a 30 day written notice. Contracts can be renewed after the 5 year period if the Board decides to do so.
- 11.12 Action by Developer. Any provision in the Declaration or the bylaws which requires action to be taken by the Developer shall be effective when in writing and signed by Arlinghaus Builders Inc., its successors or assigns. The Developer has the right to abandon or release any duties or rights granted to it under this Declaration by recording an amendment to the Declaration which states that it is releasing part of its rights or duties as a Developer under the Declaration.
- 11.13 Grammar. In this instrument, singular shall also mean plural where applicable, references to male or female shall refer to either or both, references to corporations or any other legal entity shall be construed liberally. Any grammatical questions shall be interpreted reasonably.

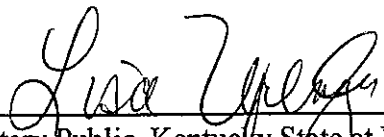
IN WITNESS WHEREOF, Arlinghaus Builders Inc., a Kentucky corporation, signs below to indicate its approval of this Declaration.

ARLINGHAUS BUILDERS INC.

By: 
Robert Schroder, Vice-President

STATE OF KENTUCKY
COUNTY OF KENTON

The above Declaration was signed, sworn to and acknowledged before me this 20 day of January, 2003, by Robert Schroder, Vice-President of Arlinghaus Builders Inc., a Kentucky corporation, for and on behalf of the corporation.


Notary Public Kentucky State at Large
My Commission Expires: 7-1-04

This instrument prepared by:



Robert Schroder Attorney
1105 O'Banion Lane, Owenton, Ky 40359

EXHIBIT 1

Description of parcel of land to be included in the North Pointe Homeowners Association:

LEGAL DESCRIPTION

Being a parcel of land that is located between North Bend Road (KY 237) and Sand Run Creek and being more particularly described as follows:

Beginning at a point in the west right-of-way line of North Bend Road (KY 237) and also being the common corner between Arlinghaus and Dotson (DB 320, PG 94); thence with the right-of-way of North Bend Road S 2°32'25" E, 164.88 feet to a point; thence S 3°34'54" E, 197.98 feet to a point; thence S 3°39'33" E, 43.21 feet to a point; thence S 3°13'16" E, 105.89 feet to a point; thence S 3°15'47" E, 121.98 feet to a point; thence S 5°41'12" E, 138.57 feet to a point; thence S 11°08'45" E, 119.61 feet to a point; thence S 19°13'43" E, 259.58 feet to a point in the line with Whitefoot (DB 389, PG 312); thence with Whitefoot N 70°47'17" E, 100.64 feet to a point; thence N 18°34'40" W, 243.18 feet to a point; thence S 61°56'42" W, 140.08 feet to a point; thence S 13°16'04" E, 447.52 feet to a corner of Whitefoot and also being the line Section Two Wyndemere Place (Plat 450 B) and Wyndemere Development (DB 581, PG 261) thence with Wyndemere Development S 74°57'52" W, 191.04 feet to a point; thence S 75°16'36" W, 647.26 feet to a point; thence S 74°43'59" W, 512.71 feet to a point; said point being a corner with Wyndemere Development and the Drees Co. (DB 677, PG 222); thence with Drees and the proposed Thornwilde Subdivision S 40°45'47" W, 1,170.14 feet to a point; thence S 40°07'53" E, 231.00 feet to a point; thence S 49°52'07" W, 772.86 feet to a point; thence N 41°22'53" W, 706.86 feet to a point; thence with Drees (DB 706, PG 105) and Stamper (DB 559, PG 178) S 67°22'07" W, 1,414.38 feet to a corner with Stamper; thence with Stamper N 41°52'53" W, 418.44 feet to a corner of Stamper and in the line with Kirkwood (DB 443, PG 290); thence with Kirkwood N 28°11'22" W, 140.85 feet to a point; thence N 38°44'21" E, 202.96 feet to a point; thence N 21°52'57" E, 250.01 feet to a point; thence N 03°32'03" W, 48.25 feet to a point; thence N 23°18'01" E, 239.43 feet to a point; thence N 28°13'47" E, 152.18 feet to a point; thence N 33°19'44" E, 188.00 feet to a point; thence N 24°58'34" E, 227.20 feet to a point; thence N 01°19'43" E, 281.36 feet to a point; thence N 29°52'58" W, 90.60 feet to a point; thence N 49°01'13" W, 236.54 feet to a point; thence S 18°30'40" W, 75.96 feet to a point; thence N 52°02'05" W, 102.69 feet to a corner with OB/GYN Specialists of Northern Kentucky P.S.C. (DB 443, PG 284); thence with OB/GYN Specialists N 15°41'31" W, 117.59 feet to a point; thence N 08°54'10" W, 166.19 feet to a point; thence N 06°40'59" W, 210.79 feet to a point; thence N 19°59'03" W, 197.22 feet to a point; thence N 63°14'58" W, 206.54 feet to a point; thence N 44°12'10" W, 126.96 feet to a point; thence N 31°00'19" W, 135.34 feet to a point; thence N 31°02'01" E, 372.09 feet to a corner with OB/GYN Specialist and Hartman (DB 349, PG 305); thence with Hartman N 31°02'01" E, 326.87 feet to a point; thence N 21°00'00" W, 401.86 feet to a point; thence N 18°00'55" W, 816.16 feet to a point; thence N 17°12'16" W, 561.89 feet to a point; thence N 17°26'21" W, 889.97 feet

Legal Description

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to a point; thence N 15°18'27" W, 208.40 feet to a point; thence N 13°48'46" W, 79.70 feet to a corner with Hempfling (DB 646, PG 136); thence N 16°33'56" W, 462.65 feet to a corner with Hempfling; thence N 75°23'56" E, 341.89 feet to a corner with Hempfling (DB 479, PG 17); thence with Hempfling N 76°42'36" E, 2,473.23 feet to a corner with Crisler (DB 66, PG 423); thence with Crisler N 80°34'21" E, 49.23 feet to a point; thence S 17°07'37" E, 141.00 feet to a point; thence N 76°27'37" E, 1,846.08 feet to a point the west right-of-way line of North Bend Road; thence with said right-of-way and a curve to the left 83.26 feet (D=15°30'40" R=307.56'); thence S 35°00'55" E, 65.11 feet to a P.C. of a curve; thence with the curve to right 175.34 feet (D=37°46'58" R=265.89'); thence S 02°46'03" W, 87.41 feet to a P.C. of a curve; thence with the curve to the left 337.36 feet (D=27°27'21" R=704.01') to a corner with Lot 9 Taylor Ridge Estates; thence leaving North Bend Road and with Lot 9 and Taylor Ridge Estates S 19°14'58" W, 143.94 feet to a P.C. of a curve; thence with a curve to the right 77.68 feet (D=61°15'10" R=72.66') to a point; thence S 80°30'08" W, 77.31 feet to a point; thence S 60°33'07" W, 54.79 feet to a point; thence S 68°24'44" W, 177.95 feet to a P.C. of a curve; thence with a curve to the right 92.58 feet (D=15°15'37" R=347.61'); thence S 83°40'20" W, 347.73 feet to a P.C. of curve; thence with a curve to the left 164.52 feet (D=37°36'05" R=250.69'); thence S 46°04'15" W, 9.62 feet to a P.C. of curve; thence with a curve to the left 394.50 feet (D=23°31'05" R=961.09'); thence S 22°33'10" W, 92.76 feet to a P.C. of curve; thence with a curve to the right 125.72 feet (D=21°24'33" R=336.45'); to a point; thence S 43°57'43" W, 83.39 feet to a point; thence S 51°07'26" W, 134.69 feet to a point; thence S 46°35'15" W, 93.78 feet to a point; thence S 74°30'W, 44.54 feet to a point; thence S 15°30'E, 401.69 feet to a corner with Baxter (DB 518, PG 116); thence with Baxter S 15°30' E, 500.00 feet to a point; thence N 75°56' E, 212.95 feet to a point; thence S 16°16'43" E, 814.32 feet to a corner with Lot 3 and Taylor Ridge Estates; thence with Lot 3 and Taylor Ridge Estates N 77°21'30" E, 899.65 feet to a point; thence S 14°14'36" E, 456.05 feet to a corner with McKnight (DB 353, PG 241); thence with McKnight S 14°14'36" E, 443.95 feet to a point in the line with Dotson (DB 320, PG 94); thence with Dotson S 77°49'25" W 528.91 feet to a point; thence S 09°34'32" E, 32.63 feet to a point; thence S 05°18'10" W, 320.75 feet to a point; thence N 89°58'47" E, 1,018.60 feet to the point of beginning.

Containing 592.2 ± Acres

EXCEPTION

The following 2 parcels of land are excluded from the North Pointe Homeowners Association, these parcels were 14.70 acres conveyed to The Boone County Board of Education and 23.50 acres conveyed to The Drees Company:

Being a parcel of land located on the west side of North Bend Road (KY 237) in Boone County, Kentucky, and being more particularly described as follows:

Beginning at a point in the existing 20' right-of-way of North Bend Road (KY 237) and a corner between Arlinghaus (DB 508, PG 312) and Dotson (DB 320, PG 94); thence with Dotson and Arlinghaus S 89° 58'47" W, 10.01 feet, said point being the real point of beginning and the new 30' West right-of-way line of North Bend Road, thence with the new 30' right-of-way line S 02°32'25" E, 165.41 feet to a point; thence S 03°34'54" E, 509.29 feet to a point; said point being a P.C. of a curve; thence with a curve to the left 13.90 feet (R=1,212.65, D=00°39'24") to a point; thence leaving the right-of-way of North Bend Road and a new division line of Arlinghaus S 83°43'13" W, 35.00 feet to a point; thence S 16°59'27" W, 54.43 feet to a point in the proposed right-of-way line of the proposed road into the North Pointe Development; thence with said proposed right-of-way S 83°43'13" W, 109.93 feet to a P.C. of a curve; thence with a curve to the right 236.26 feet (R=465.00, D=29°06'41") to a point; thence S 22°49'54" W, 5.00 feet to a point; thence N 67°10'06" W, 658.72 feet to a point; thence leaving said proposed right-of-way N 00°01'13" W, 470.33 feet to a point in the line with Dotson (DB 320, PG 94); thence with Dotson N 89°58'47" E, 960.38 feet to the real point of beginning.

Containing 14.70 acres as surveyed by Raymond Erpenbeck Consulting Engineers in August, 1999.

Being a tract of land located in Boone County, Kentucky, near the Sand Run Creek and North Bend Road and Thornwilde Subdivision, at a point common to tracts of land owned by Arlinghaus Builders (Deed Book 584, page 46 and page 51), and the Drees Company (Deed Book 562, page 170), and the Drees Company (Deed book 677, page 222), this being the point of beginning; then S 49-40-39 W 541.42 feet to a point; then S 49-38-48 W 228.80 feet to a point; then N 41-47-07 W 707.25 feet to a point; then S 67-49-15 W 475.56 feet to a point; then N 33-15-12 E 838.20 feet to a point; then N 83-37-43 E 1330 feet to a point; then S 39-50-49 W 680 feet; then S 41-02-51 E 233.12 feet to the point of beginning, containing 23.50 acres more or less.