

## EASEMENT AND SEWER PUMP STATION AGREEMENT

9<sup>th</sup> This Easement and Sewer Pump Station Agreement ("Agreement") is made this day of MAY, 2014 by and between The Bay Pointe Club, LLC ("Club"), a limited liability company with a usual address c/o Stonestreet Corporation, 501 Wampanoag Trail, Suite 400, Riverside, RI 02915, and the Bay Pointe Village Homeowners Association ("Village"), the By-Laws of which are dated May 25, 1989 and recorded with Plymouth County Registry of Deeds ("Registry") in Book 9243, Page 290, with a usual address of Wareham, Massachusetts.

WHEREAS, the Club is the owner of a certain parcel of land, with buildings and improvements thereon, situated off Onset Avenue in the Town of Wareham, Plymouth County, MA, pursuant to deed dated February 13, 2012, and recorded with the Registry in Book 40976, Page 207 and in the Plymouth Registry District of the Land Court as Document 687953, noted on Certificate 117066 ("Club Property");

WHEREAS, Village is the organization of unit owners of Bay Pointe Village Condominium, a condominium consisting of sixty-one (61) residential units and common elements, located in Wareham, MA and created pursuant to M.G.L. c. 183A by Master Deed dated May 25, 1989, and recorded with the Registry in Book 9243, Page 214, as amended (the "Condominium"), which organization is the entity through which the unit owners manage and regulate the Condominium, including its common areas and facilities ("Village Common Area");

WHEREAS, there is located upon the Club Property a certain sewer pump station, with equipment therein and appurtenances thereto, and certain gravity lines and force mains for sewage disposal from buildings and structures on each of the Village Common Area and Club Property into the municipal sewer system of the Town of Wareham ("Town");

WHEREAS, said pump station presently serves, and has served since creation of the Condominium, the existing Club Structures and the Village Property, respectively, and more particularly described in Section II(3) herein;

WHEREAS, the parties desire to provide for express easements for the use of said pump station, gravity lines, and force main, and to establish the method by which the costs of operation, maintenance, repair, replacement, and improvements in and to said pump

station and said lines and mains are to be shared between the parties, and for the administration of such pump station, lines, and mains, the intent of the parties being for the Operating Expenses and the Maintenance Costs to be shared pro-rata in accordance with the allocation defined in Section II(4) herein; and

WHEREAS, the Village has complied with the provisions of M.G.L. c. 183A, § 5(b)(2), to the extent applicable hereto;

NOW, THEREFORE, for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

I. Grant of Easement to Village. The Club hereby grants to the Village, with quitclaim covenants, an irrevocable, perpetual, non-exclusive right of way and easement in, under, over, across, through, to, and from so much of the Club Property as is shown as "Village Easement Area" on a certain drawing attached hereto and made a part hereof as Exhibit "A" ("Easement Drawing"), for sewage disposal purposes. The Village Easement Area is forty feet (40') by sixty feet (60') in dimension, bounds on Bay Pointe Drive for said distance of forty (40') feet, and is located approximately as shown on the Easement Drawing. The Village Easement Area also includes such other portions of the Club Property as are described below in this Section I.

The easement granted herein includes, without limitation:

(i) the right to locate, relocate, erect, construct, reconstruct, install, lay, dig up, operate, maintain, repair, inspect, service, replace, alter, remove, connect to, and use the sewage pump station located within the Village Easement Area, including all structures, equipment and utilities therein or associated therewith, and all lines, mains, conduits, conductors, connections, wires, fittings, fixtures, meters, manholes, and other apparatus, equipment and fixtures connected thereto, used in connection therewith, or otherwise deemed necessary by Grantee for the exercise of the easement granted herein including the purposes specified above (referred to, collectively, hereafter as the "Pump Station"); and

(ii) the right to pass and repass, on foot and with vehicles, including with machinery and equipment, in, under, over, across, through, to, and from the Village Easement Area and such other portions of the Club Property (including, without limitation, Bay Pointe Drive to the extent part of the Club Property) as may reasonably be necessary at any time, in connection with the exercise of the rights and easements granted to the Village hereunder, and the performance of any obligations provided for hereunder, including under Sections II(1) and II(2).

Without limitation, such lines and mains as are part of the Pump Station include gravity lines running from the Village Common Area to the Pump Station ("Village Gravity Lines") and the force main(s) running from the Pump Station to Onset Avenue in the Town of Wareham. To the extent the location of any portion of the Pump Station (including, without limitation, any Village Gravity Lines, force main(s), or other items

identified in Section I(i) as constituting part of the Pump Station), is not expressly depicted on the Easement Drawing, the Village Easement Area shall be deemed to include same, and the rights under Section I(ii) shall apply for a distance of seven and one-half feet (7.5') on each side thereof, measured from the exterior edges thereof.

The easement granted hereunder shall be appurtenant to the Village Common Area, shall benefit the Village Property, and may be exercised by the Village, its Board of Managers, agents, employees, beneficiaries, contractors, licensees, successors and assigns. The Club reserves the right to use the Pump Station in common with the Village, but only to provide sewage disposal for the Club Structures identified in Section II(3).

## II. Maintenance and Cost Sharing Agreement

### 1. Operating Expenses:

Operating costs and expenses of the Pump Station shall include, but may not be limited to, usage of electricity and gas which are separately metered to the pump(s) and emergency generator, respectively, of the Pump Station; operator costs and sewage hauling expenses, if applicable; and costs associated with private or public inspection of the Pump Station (such costs and expenses sometimes being referred to hereafter, collectively, as "Operating Expenses"). Operating Expenses shall exclude any such costs or expenses incurred by a party with respect to its gravity or other sewer lines that connect any building or structure on such party's property to the Pump Station.

### 2. Maintenance Costs:

Maintenance costs and expenses of the Pump Station shall include, but are not limited to, maintenance, repair, replacement, excavation, restoration, alteration, upgrade, improvement, removal, and relocation of the Pump Station, including all pumps, tanks, controls, inflow and outflow piping and lines, gravity lines, force mains, conduits, connections, conductors, wires, fittings, fixtures, meters, manholes, alarms, valves, generators, monitoring equipment, switches, power sources, and other apparatus, equipment and fixtures, including accessories and appurtenances thereto; utility installations for utility services separately metered to the Pump Station; and the Pump Station structure in which the pumping equipment is housed (such costs sometimes being referred to hereafter, collectively, as "Maintenance Costs").

Maintenance Costs shall exclude any such costs or expenses incurred by a party with respect to its gravity or other sewer lines that solely connect any building or structure on such party's property to the Pump Station. Maintenance Costs also shall exclude any and all real estate taxes assessed at any time with respect to the Club Property, including the Pump Station, which shall be the responsibility of the Club, and shall exclude the surface of the Village Easement Area, the planting, landscaping, and other maintenance of which shall be the responsibility of the Club.

3. Properties:

The buildings, structures, and properties which are connected to and may utilize the Pump Station hereunder are as follows:

A. The Village Property: The Village Common Area and the existing sixty-one (61) residential condominium units of the Condominium ("Village Property").

B. The Club Structures: The following buildings, structures, and areas of or serving the Club (collectively, the "Club Structures"):

(i) the so-called clubhouse building leased and operated by the Club, ("Clubhouse").

(ii) the so-called pavilion building owned and operated by the Club, ("Pavilion"); and

(iii) the so-called existing maintenance building owned and operated by the Club ("Maintenance Building").

The approximate location of each of the Club Structures, and a portion of the Village Common Area, is shown on the Easement Drawing.

The term "Club Structures" also shall include any Additional Club Structure (as defined in Section II(6)) connected to the Pump Station pursuant to the applicable provisions of this Agreement, including Section II(6).

The Village Property and the Club Structures are sometimes referred to collectively hereafter (including, without limitation, in Section II(4) below) as the "Properties," and are sometimes referred to individually hereafter as a "Property."

The Club warrants that it shall not connect any building, structure or improvement other than the Club Structures to the Pump Station, and shall not grant any other person or entity any easement, lease, license, or other right or privilege to connect any building, structure or improvement to the Pump Station, without first complying with the provisions of Section II(6) as to any Additional Club Structure. The Club further warrants that its irrigation system, despite having its own water meter, is not connected to the sewer system serving the Club Property and does not utilize the Pump Station.

4. Allocation of expenses and costs to each of the Properties:

A. The parties agree that the Operating Expenses and the Maintenance Costs for the Pump Station shall be shared among the then-current owners of the respective Properties which utilize the Pump Station. The allocation of the Operating Expenses and Maintenance Costs to each of the Properties (any Additional Club Structures being considered part of the Club Property for purposes of such allocation) shall be percentage

based, and calculated using each Property's gallons of potable water metered into such Property as a percentage of the total gallons metered to both of the Properties. This shall be referred to herein as the "Allocation Percentage." The number of gallons metered into each of the Properties shall be evidenced by the usage readings (whether per gallon, cubic foot, or other method of usage readings, from time to time) contained in the records of the Onset Water District (or successor governmental entity, if applicable). The Clerk of the Village shall obtain the usage information for the Village Common Area and all residential condominium units of the Village, and shall request usage information for all meters serving the Club Structures (the Club and the owner of each Additional Club Structure hereby authorizing the release of such information to the Village), from the Onset Water District in early January every three (3) years, commencing in January, 2016 (or at such lesser intervals of time as provided below in Section II(4)(B)) so that the Allocation Percentage can be calculated in accordance with the provisions of this Section II(4). If the Clerk is unable to obtain any of such information, each party agrees to provide the Clerk of the Village with copies of all such meter readings for its respective Property in a timely manner upon request by such Clerk, and to otherwise cooperate with reasonable requests of the other party regarding meter readings as to either of the Properties. The responsibility of the Club hereunder shall include obtaining and providing the Clerk of the Village with such readings for any Additional Club Structure; provided, however, that the owner of each Additional Club Structure also shall be obligated to comply with requests of the Village under this paragraph. At the option of the Village, the foregoing information may be obtained or requested by any officer of the Village, other than or in addition to the Clerk.

i. By way of example only, the 2012 usage readings obtained by the Clerk in early January 2013 shall be used to calculate the percentage shares for the years 2013, 2014 and 2015; and the usage readings for 2015 to be obtained by the Clerk in early January 2016, shall be used to calculate the percentage shares for the years 2016, 2017 and 2018.

B. The Club shall be responsible for making timely payment to the Village of the Club Property's respective Allocation Percentage of the Operating Expenses and Maintenance Costs under Paragraphs 1 and 2, above, in accordance with the payment provisions of this Agreement, including Section II(5)(B). The Club agrees that such payments shall include any portion of the Club Property's Allocation Percentage that is attributable to any Additional Club Structure(s), whether or not owned by the Club.

C. The parties agree that the Allocation Percentage of each party for calendar year 2013, 2014, and 2015 shall be as follows: Village – 87%; Club – 13%. The Allocation Percentage shall be re-calculated every three (3) calendar years (as provided for above in Section II(4A)), while the cost sharing agreement under this Section II remains in effect. Notwithstanding the foregoing provisions of this Section II(4), including the example in Section II(4A)(i), the Allocation Percentage may be re-calculated by the Village at lesser intervals of time in connection with the addition of any Additional Club Structure to the Pump Station.

i. By way of example only, if during the course of one (1) year, the Village Property received a total of one million (1,000,000) gallons of metered water, the Clubhouse received a total of one hundred thousand (100,000) gallons of metered water, the Pavilion received a total of one hundred thousand (100,000) gallons of metered water, the Maintenance Building received a total of fifty thousand (50,000) gallons of metered water, and one Additional Club Structure received a total of fifty thousand (50,000) gallons of metered water, the total would be one million three hundred thousand (1,300,000) gallons assumed to have flowed into the Pump Station. The Village's Allocation Percentage would be 1,000,000 divided by 1,300,000, or 76.92%, and the Club's allocation for the Club Structures would be the sum total of the following: the Allocation Percentage for the Clubhouse would be 100,000 divided by 1,300,000, or 7.69%; the Allocation Percentage for the Pavilion would be 100,000 divided by 1,300,000, or 7.69%; the Allocation Percentage for the Maintenance Building would be 50,000 divided by 1,300,000, or 3.85%; the Allocation Percentage for the Additional Club Structure would be 50,000 divided by 1,300,000, or 3.85%; or a total for the of 23.08%.

5. Maintenance Responsibility and Reimbursement:

A. The operation, inspection, servicing, maintenance, repair, upgrade, improvement, or replacement of the Pump Station and equipment therein or associated therewith, shall be undertaken by or for the Village, at such times, in such manner, and by such agents, employees, contractors, licensees, or other persons as the Village, in the exercise of its reasonable business judgment may determine. The Village shall have the right to enter into contracts with agents, employees, independent contractors, licensees and other persons ("vendors") to carry out any of the foregoing services, the costs, expenses, and fees of which shall constitute Operating Expenses or Maintenance Costs under this instrument, as determined by the Village. To the extent the written approval or execution of a contract is required by any vendor with respect to any such services, or the provision of labor and/or materials, the Club agrees to promptly provide same upon request by the Village.

B. On a quarterly basis (or monthly in its discretion), the Village shall provide the Club with copies of invoices for work performed on or at the Pump Station during the preceding quarter of each calendar year, and a statement for all amounts due from the Club for Operating Expenses and Maintenance Costs during the time period as to which the statement applies. The statement shall set forth the total costs and expenses incurred during the applicable period of time, and a calculation of portion allocable to each of the Village and the Club, according to the Allocation Percentages then in effect. All payments by the Village and the Club shall be due and payable in or within thirty (30) days of the issuance of such statement. Notwithstanding the foregoing provisions of this Paragraph, if the Village determines, in its discretion, that Operating Expenses and/or Maintenance Costs for any such period of time will exceed \$5,000.00, the Village may request an advance payment from the Club. If such a request is made, the Club shall make such payment to the Village in or within thirty (30) days of such request, and the payment shall be applied toward the Club's share of the estimated total of such Operating Expenses and/or Maintenance Costs, based on the Club's Allocation Percentage then in

effect, and the Parties shall re-adjust after such Operating Expenses and Maintenance Costs actually are incurred. Any invoice not paid within thirty (30) days shall bear interest thereafter at a rate equal to the published Wall Street Journal prime rate plus three percent (3.0%) per annum until paid. If at any time the Wall Street Journal prime rate is not being published, the Village may substitute a reasonably comparable published prime rate in its place.

C. If a party fails to timely pay any Operating Expenses or Maintenance Costs incurred under or pursuant to this Agreement, the other party shall be entitled to pay such expense or cost and to recover same from the non-paying party together with the costs, including reasonable attorneys' fees, in an action at law. If such failure is by or attributable to the Club, the Village, in addition to its rights and remedies against the Club, may enforce this provision against the owner(s) of any Club Structure or Additional Club Structure, provided that the recovery of Operating Expenses or Maintenance Costs against each such owner shall be limited to the share of the Allocation Percentage of the Club Property attributable to such owner's structure.

D. Notwithstanding any provision of this Section II to the contrary, if the Village no longer utilizes the Pump Station or force main in connection with sewage disposal from the Village Common Area, the obligations of the Village under this Section II, shall terminate upon written notice thereof given by the Village to the Club. Any such termination shall take effect thirty (30) days after the recording by the Village of a certificate of termination with the Registry, executed by a majority of the then-serving members of the governing board of the Village. Such certificate shall identify this Agreement by name and recording information, and shall recite the manner in which written notice of termination was given by the Village to the Club. Thereafter, the Club shall be solely responsible, at its own cost and expense, for all operation and maintenance of the Pump Station under this Agreement, including this Section II(5), and for all Operating Expenses and Maintenance Costs, and the Village shall not be entitled to use the Pump Station for any purpose without the prior written consent of the Club.

E. Notwithstanding any provision of this Section II to the contrary, if all of the Club Structures (and Additional Club Structures, if any) no longer utilize the Pump Station or force main in connection with sewage disposal from the Club Property, the Club may notify the Village of its intent to terminate its obligations under the cost sharing provisions of this Section II. Within thirty (30) days of such notice, the Village shall issue, and the Club shall pay, a final invoice for Operating Expenses and Maintenance Costs owed, or to be owed by the Club through the effective date of termination. Once such payment is made, in full, the Village shall issue a certificate of termination, executed by a majority of the then-serving members of the governing board of the Village, which the Club may record with the Registry. Termination shall take effect thirty (30) days after the date of recording of such certificate. Such certificate shall identify this Agreement by name and recording information, and shall recite the manner in which written notice of termination was given by the Club to the Village. Thereafter, the Village shall be solely responsible, at its own cost and expense, for all operation and maintenance of the Pump Station under this Agreement, including this Section II(5), and

for all Operating Expenses and Maintenance Costs, and the Club shall not be entitled to use, or connect any structures to, the Pump Station, or use any force main or other sewer lines connected to the Pump Station, for any purpose without the prior written consent of the Village.

6. Addition of Additional Club Structures:

A. In connection with the construction of any additional buildings, including single or multi-family dwellings, on the Club Property (each being referred to hereafter as "Additional Club Structure"), the owner of the Club Property may connect each Additional Club Structure to an existing sewer line currently connected to the Pump Station or connect an additional sewer line or lines to the Pump Station to provide sewerage disposal service for such Additional Club Structure, provided that the Club first complies with all applicable requirements of this agreement, including the following covenants and agreements:

B. Prior to so connecting an Additional Club Structure, (i) the Club shall provide the Village with complete copies of all plans and specifications pertaining to any sewer service for such proposed Additional Club Structure, as have been approved by the Town, and (ii) a certification by the Club's professional engineer or registered land surveyor (duly licensed and in good standing in Massachusetts), running directly to the Village, certifying that the connection of such Additional Club Structure to the Pump Station will not cause the capacity of the Pump Station to be exceeded, or the level or quality of service to the Village to be degraded or diminished, and will not otherwise adversely affect service to the Condominium, or cause the Village to incur additional cost or expense in connection with its operation and use of the Pump Station. If the foregoing requirements are met and the Club obtains all governmental approvals, permits and authorizations for the work, the Club may connect such Additional Club Structure to the Pump Station, at its cost and expense, and each such Additional Club Structure connected to the Pump Station shall be deemed a Club Structure under Section II(3).

C. If the Club intends to add an Additional Club Structure (or Structures), but such Structure(s) will or may cause the capacity of the Pump Station to be exceeded, or the level or quality of service to the Village to be degraded or diminished, then the Club shall disclose same to the Village and the Club may propose reasonable upgrades or other modifications to the Pump Station, or the construction of a replacement Pump Station or an additional pump station, to address such matters. In connection with any such proposal, the Club shall provide the Village with (i) copies of its construction plans, specifications, and other materials to be submitted to the Town for purposes of obtaining such building permit(s) and/or other governmental authorizations as are necessary for construction of such upgrades or modifications, or of such replacement or additional pump station, and (ii) a certification by the Club's professional engineer or registered land surveyor (duly licensed and in good standing in Massachusetts), running directly to the Village, certifying that the proposed upgrades and/or modifications to the Pump Station (or proposed replacement Pump Station or additional pump station) will not cause the capacity of the Pump Station to be exceeded, or the level or quality of service to the



Village to be degraded or diminished, and will not otherwise adversely affect service to the Condominium or cause the Village to incur additional cost or expense in connection with its operation and use of the Pump Station. If the foregoing requirements are satisfied and the Club obtains such governmental permits and/or authorizations necessary for the work, the Club may undertake, at its cost and expense, (a) such upgrades and/or modifications, as comply with such permits or governmental authorizations, to increase the capacity of the Pump Station (including all related equipment, gravity lines, force mains, and utilities); or (b) construction of a replacement Pump Station or additional pump station on the Club Property to serve such Additional Club Structure(s) and/or the Village. To the extent the Pump Station serving the Village is relocated, no such relocation shall occur until the Club complies with its obligations under this Section II(6) and Section II(7). To the extent an additional pump station is constructed, unless the Village gives its prior written consent (i) such pump station shall service only Club Structures or Additional Club Structures, and (ii) the Village shall have no obligation to operate or contribute to any costs or expenses of such pump station under this Agreement. The Village shall be under no obligation, express or implied, to give any such consent and, if given, may be subject to such reasonable conditions as the Village may impose. The foregoing obligations of the Club under this Section II(6)(C) shall be in addition to those set forth in Section II(6)(B).

D. All work undertaken pursuant to Section II(6)(B) and/or Section II(6)(C) shall be performed in compliance with the plans, specifications, and other materials, if any, submitted to the Village; the certification of the Club's engineer or land surveyor, as aforesaid; and the provisions of this Agreement, including, without limitation, this Section II(6). All such work shall be executed in a good and workmanlike manner, using new materials. All costs and expenses of, or relating to, any connection of any Additional Club Structure to the Pump Station, or any such upgrade or modification, whether direct or indirect, shall be paid by the Club in a timely manner and the Club shall indemnify, defend, and hold harmless the Village from and against same. The connection of any Additional Club Structure to the Pump Station, or the construction of any upgrade, modification, or new or additional pump station, and any use of any of the foregoing without objection by the Village, shall not constitute a waiver by the Village of any right or remedy it may have under or pursuant to this Agreement.

E. If, and at such time as, any Additional Club Structure is added to the Pump Station pursuant to this Section II(6), the Allocation Percentage may be recalculated by the Village using the method detailed in Section II(4) above, with such Additional Club Structure being attributed to the Club's Allocation Percentage; provided, however, that the Club shall bear all costs and expenses incurred by the Village in connection with, or as a result of, the Additional Club Structure or the connection of such Additional Club Structure to the Pump Station, including any loss of use of the Pump Station or sewage disposal from the Condominium to the Town's municipal sewer system, and any administrative costs. The Village, in its sole discretion, may (but shall not be obligated to) estimate projected usage for each Additional Club Structure added to the Pump Station with respect to the first year of usage by such property, and to re-allocate the Allocation Percentage of each party based on such estimate, with adjustment for any

excess or deficiency to be made by the parties after expiration of such year. The Club also shall bear all costs and expenses incurred by the Village in connection with, or as a result of, any upgrade, modification, replacement, or relocation of the Pump Station, or construction of an additional pump station, including any loss of use of the Pump Station or sewage disposal from the Condominium to the Town's municipal sewer system, and any administrative costs.

F. Any party or person who connects any Additional Club Structure to the Pump Station, or makes use of the Pump Station to service such Additional Club Structure, shall be deemed to have joined in, and consented to, this instrument, whereupon the record owner of such Additional Club Structure shall be deemed to have submitted his or her real property to this Agreement and, thereafter, such owner, his/her successors and assigns, and such Additional Club Structure, shall be subject to this Agreement including all obligations binding on the Club hereunder, jointly and severally with the Club. Any such owner, promptly upon request by the Village, shall execute and deliver to the Village, together with the applicable recording fee, an instrument submitting such Additional Club Structure to this Agreement, which the Village may record with the Registry of Deeds; provided, however, that the recording of any such instrument shall not be a condition precedent to the applicability or enforceability of the foregoing provisions of this paragraph.

G. If, at any time, any additional buildings, structures, or dwelling units are built upon the Village Common Area, and the Village desires to connect same to the Pump Station, the foregoing provisions of this Section II(6) shall apply thereto.

H. If a second pump station is constructed pursuant to Section II(6)(C), the obligations of the Village under this Article II shall not apply to such pump station, and the Club, in addition to its obligations hereunder as to the existing Pump Station, shall be responsible for such second pump station, including all operating expenses and all maintenance expenses thereof, without contribution from the Village.

7. Revisions to Easement Plan:

A. If pursuant to Section II(6)(C), the Pump Station is to be replaced, or an additional pump station which will provide service to the Village, is to be constructed, such that the pump station(s) serving the Village will no longer be situated in the same location as the Pump Station shown on the Easement Plan, the Club covenants and agrees as follows, as a condition to the replacement, relocation, and/or construction of any such pump station:

1. The Club shall provide the Village with a revised easement plan, suitable for recording with the Registry of Deeds, showing the location of the replacement Pump Station (and/or additional pump station, if applicable), together with an amendment of this instrument (including, without limitation, to confirm any change in location of the easement areas hereunder), for review and approval by the Village, such approval not to be unreasonably withheld. Upon approval by the Village, the Club shall obtain duly

executed subordinations to such amendment from any and all mortgage and lien holder(s) of the Club and of any other owners of Club Structures or Additional Club Structures. The amendment, including such subordinations, and the revised easement plan shall be recorded with the Registry in the chain of title to this instrument.

2. The Club shall be responsible, at its cost, for obtaining any and all such subordinations, and for the fees and costs incurred for the preparation and recording of such amendment and plan.

8. Covenants of Club Pursuant to Sections II(6) and II(7):

In connection with the addition of any Additional Club Structure to the Pump Station, any upgrade or modification of the Pump Station, or the construction of any additional or replacement pump station, or any relocation of the Pump Station, pursuant to the foregoing provisions of Section II(6), the Club covenants and agrees as follows:

A. The Club shall not cause or permit any interruption or disruption of operation of the Pump Station (including the force main and any lines from the Village to the Pump Station) to the Village, including the Village Common Areas and units of the Village, arising from any such construction of additional buildings or structures, or connection of additional buildings or structures, to the Pump Station, or relocation of the Pump Station or any of said mains or lines. The foregoing shall not apply to any temporary interruption as may occur in connection with work conducted by the Club pursuant to Section II(6) above; provided, however, that the Club shall use best efforts to avoid and minimize any such temporary interruption and shall be subject to the provisions of Section II(8)(E) and (F) with respect to any such temporary interruption.

B. All work shall be performed in a good and workmanlike manner, in compliance with all applicable Federal, state and local laws, statutes, codes, ordinances, by-laws, rules and regulations, and permitting requirements. To the extent any common areas and facilities of the Village, any rights or interests appurtenant thereto, or the Pump Station is disturbed or damaged as a result of or in connection with any exercise of the rights of the Club under said Section II(6), the Club shall immediately and at its expense remedy any damage and restore such premises to materially the same condition as existed prior to such disturbance or damage.

C. To the extent notice of such proceedings is required to be given to abutters under applicable law, the Club shall provide the Village with notice of any and all proceedings before governmental authorities concerning (i) the Pump Station (including, without limitation, any upgrade or relocation thereof), or (ii) the connection of any Additional Club Structure to the Pump Station, whether or not the Village is considered an abutter for notice purposes in such proceedings.

D. Upon connection of any Additional Club Structure to the Pump Station, or completion of construction and installation of any upgrade or modification to the Pump Station, any replacement or relocation of the Pump Station, or any additional pump

station that will provide service to the Village, the Club shall promptly, and at its cost or expense, cause to be prepared by a Massachusetts professional engineer or registered land surveyor, in good standing, an as-built plan thereof. An original of such as-built plan, signed, dated, and stamped by such engineer or surveyor shall be delivered promptly to the Village; provided, however, that if such an original is delivered to the Town, then a true and correct copy of such original may be delivered to the Village instead of an original.

E. The Club shall pay all costs and expenses arising from or in connection with any matters identified or provided for in, or permitted under, Section II(6),(7) or (8), including, without limitation, for plans, drafting of instruments and documents, permits, appeals, engineering, legal, and other professional fees, labor and materials, and recording fees; and shall reimburse the Village any and all costs and expenses incurred by the Village in connection with any such matter, or as a result thereof, including, without limitation, any loss of use of the Pump Station or sewage disposal from the Condominium to the Town's municipal sewer system. Such reimbursement shall be due upon demand of the Village, accompanied by invoices or other reasonable evidence of any cost or expense incurred.

F. The Club shall indemnify, defend, and hold harmless the Village from and against any and all claims arising from or in connection with any matters identified or provided for in, or permitted under, Section II(6),(7) or (8), including, without limitation, interruption or disruption, or any such relocation, including, without limitation, injury to persons, or damage to property, and any and all costs and expenses for alternative sewage disposal during any period of time in which the Village Property cannot utilize the Pump Station or mains or lines due to any such interruption or disruption, such indemnification to be to the full extent of the Club's indemnification, defend, and hold harmless obligation to the Village under Section II(11).

9. Remedies: Any party that brings a separate civil action under or pursuant to any of the terms and conditions of this Agreement as a result of default by another party and prevails in demonstrating a material default with respect to a matter within such other party's control in such proceeding shall be entitled, in addition to any other relief awarded by the Court or other tribunal, to its costs and expenses, including its reasonable attorneys' fees as part of any final judgment entered by the Court.

10. No Waiver: The failure of a party to enforce any covenant, agreement, or Obligation hereunder, shall not be deemed to be a waiver of the right to do so thereafter as to the same breach or to one occurring prior or subsequent thereto.

11. Indemnification: The Club hereby agrees to indemnify, defend, and hold harmless the Village and the unit owners of the Condominium, their respective managers, agents, employees, tenants, heirs, representatives, successors and assigns, from and against any and all claims, demands, actions, suits, liabilities, damages, assessments, penalties, fines, costs, and expenses, including reasonable attorneys' fees (collectively, "claims"), arising from, or in connection with (i) the performance by the Village of any

obligation hereunder, or (ii) any negligence or willful misconduct of, or attributable to the Club, or (iii) any breach of obligation hereunder of, the Club, or interruption of the use of the Pump Station for the purposes granted to the Village herein; provided, however, that there shall be excepted from the foregoing indemnification any claims as arise solely from the gross negligence or willful misconduct of the Village.

12. Severability. If any provision hereof or the application of any such provision to any person or circumstance shall be held invalid, the remainder of this instrument or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

13. No Agency. Nothing in this instrument shall be deemed or construed to create or evidence any relationship between the Village and Club as principal and agent, limited or general partners, or joint venturers, nor to terminate or extinguish any existing easement of the Village in and to the Club Property, or any portion thereof.

14. Notice. Any notice or other communications hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by national overnight courier company, or personal delivery, in each instance to the address set forth above on Page 1. Notice shall be deemed received one (1) business day after the sending of notice by one of the methods set forth above.

15. Amendment. This instrument shall not be modified, amended or otherwise changed without the express written consent of the Village, acting by and through its Board of Managers. No consent of the Village shall be valid unless included in a written instrument, duly executed by a majority of the members of its Board of Managers and recorded with the Registry.

16. Headings. Any headings of sections or paragraphs in this Declaration are for convenience of reference only and do not form a part hereof do not modify, interpret or construe the intentions of the parties.

17. Board's Representative Capacity. The Club hereby acknowledges that each Board member signing this Agreement does so in his or her capacity as a member of the Board of Managers, being the governing body of the Village, and not in his or her personal or individual capacity; and that the Village is not engaged in trade or commerce. No Board member and no unit owner of any unit of the Condominium, nor any managing agent of the Village shall ever be personally liable to the Club under or pursuant to this instrument.

18. Governing Law. The laws of The Commonwealth of Massachusetts shall govern the interpretation, validity, performance, and enforcement of this instrument.

19. Time of Essence. Time is of the essence with respect to performance by each Party of its covenants, agreements, and obligations hereunder.

20. Run with the Land. This instrument, including all rights, easements, covenants, agreements and obligations hereunder, shall inure to the benefit of and shall be binding upon the Club and the Village, their respective managers, officers, agents, employees, successors and assigns, including successors in title, and shall be deemed covenants running with the land as to the Club Property and the Village Common Area. A description of the Club Property is attached hereto and made a part hereof as Exhibit "B." A description of the Village Common Area is attached hereto and made a part hereof as Exhibit C."

21. Allocation of Costs. The parties agree that, as between them, the allocation of costs and expenses provided for in this instrument shall control over any allocation between them of such costs and expenses as may be contained in any instrument recorded with the Registry prior hereto.

22. Authority of Club. The Club hereby represents that it holds all right, title and interest in and to the Club Property and existing Club Structures as is necessary, and that it is authorized and empowered, to make the grants of rights and easements to the Village provided for herein.

23. Waiver. Each party waives recovery of consequential, special, and multiple damages, and damages for economic loss, except to the extent otherwise provided in this Agreement including as to costs of alternative sewage disposal.

[signatures appear on next page]

Executed under seal this 9 day of May, 2014.

The Bay Pointe Club, LLC

By: *Timothy G. Fox*  
TIMOTHY G. FOX, Manager  
and not individually

Bay Pointe Village Homeowners Association  
By a Majority of its Board of Managers:

*Donna J. Mountain*  
\_\_\_\_\_, Manager

and not individually  
DONNA J. MOUNTAIN

*Jean C. Purrier*  
\_\_\_\_\_, Manager

and not individually  
JEAN C. PURRIER

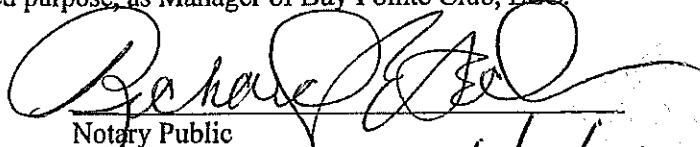
*Gerard Brunelle*  
\_\_\_\_\_, Manager

and not individually

COMMONWEALTH OF MASSACHUSETTS

Plymouth County, ss.

On this 9th day of MAY, 2014, before me, the undersigned notary public, personally appeared TIMOTHY G. FAY, proved to me through satisfactory evidence of identification, being (check whichever applies): \_\_\_ driver's license or other state or federal governmental document bearing a photographic image, \_\_\_ oath or affirmation of a credible witness known to me who knows the above signatory, or  my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him/her voluntarily for its stated purpose, as Manager of Bay Pointe Club, LLC.



Notary Public

My Commission Expires: 4/2/2021

Print Notary Public's Name: RICHARD E. SECHER



COMMONWEALTH OF MASSACHUSETTS

Plymouth County, ss.

On this 9<sup>th</sup> day of MAY, 2014, before me, the undersigned notary public, personally appeared SEE BELOW\*, proved to me through satisfactory evidence of identification, being (check whichever applies): \_\_\_ driver's license or other state or federal governmental document bearing a photographic image, \_\_\_ oath or affirmation of a credible witness known to me who knows the above signatory, or  my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him/her voluntarily for its stated purpose, as Manager(s) of Bay Pointe Village Homeowners Association.



Notary Public

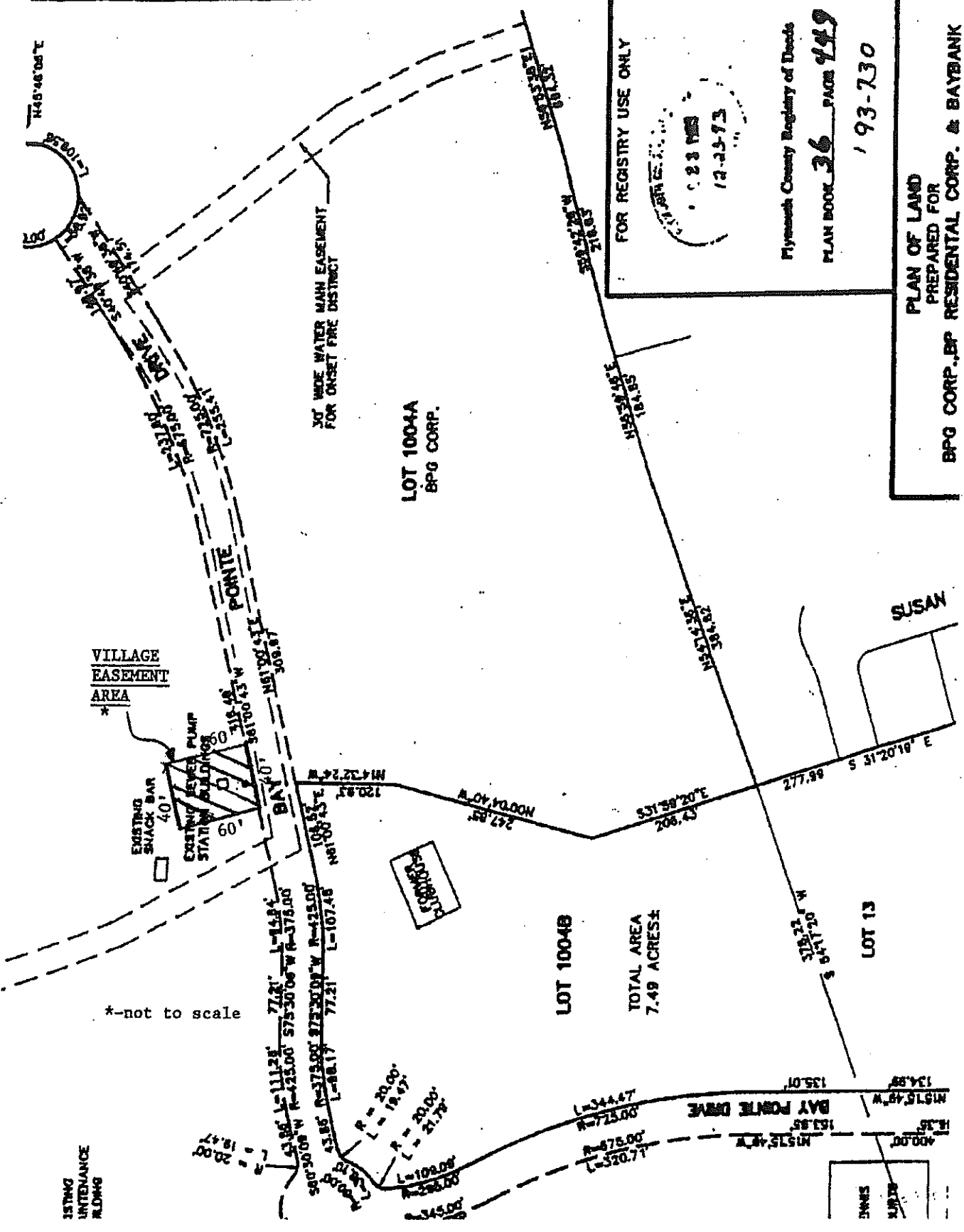
My Commission Expires: 4/2/2021

Print Notary Public's Name: RICHARD E. SECHER

\* DONNA J. MOUNTAIN  
JEAN C. PURRIER  
GERARD BRUNELLE

EXHIBIT A

1/2" 1/2"



FOR REGISTRY USE ONLY

12-23-73

Plymouth County Registry of Deeds

PLAN BOOK 36 PAGE 1419

193-730

PLAN OF LAND PREPARED FOR BPG CORP. & BAYBANK

VILLAGE EASEMENT AREA \*

EXISTING SHACK BAR 40'

EXISTING PUMP STATION BUILDING

EXISTING WATER PUMP

30' WIDE WATER MAIN EASEMENT FOR ONSET FIRE DISTRICT

LOT 1004A BPG CORP.

LOT 1004B

TOTAL AREA 7.49 ACRES ±

LOT 13

SUSAN

\*-not to scale

EXISTING UTILITY BUILDING

BAY PONTE DRIVE

DWGS

EXHIBIT B

DESCRIPTION OF CLUB PROPERTY

A certain parcel of land, with buildings and improvements thereon, situated off Onset Avenue in the Town of Wareham, Plymouth County, MA, and more particularly described in a certain deed from Digital Federal Credit Union to Bay Pointe Club, LLC, dated February 13, 2012, and recorded on February 14, 2012 with Plymouth County Registry of Deeds in Book 40976, Page 207 and with Plymouth Registry District of the Land Court as Document 687953, being more particularly described as follows:

A certain parcel of land on the Northerly side of Onset Avenue in that part of Wareham, Plymouth County, Massachusetts, known as Onset, containing both registered and unregistered land shown as Lot 1004A ("Unregistered Premises") and Lots 1, 2, 3, 4, 7, 12, & 14 ("Registered Premises"), on a Plan entitled "PLAN OF LAND prepared for BPG Corp., BP RESIDENTIAL CORP. & BAYBANK, ONSET AVE., WAREHAM, MA" dated December 7, 1993, by Braman Engineering Ltd. (containing two sheets) and otherwise known as Plan No. X-114 ("December 7, 1993 Plan").

The property is more particularly described according to said December 7, 1993 Plan, in said Deed.

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EXHIBIT C

DESCRIPTION OF VILLAGE COMMON AREA

Certain parcels of land, with buildings thereon, situated on Bay Pointe Drive and Cahoon Street (formerly called Old Schoolhouse Road, in the Town of Wareham, Plymouth County, Massachusetts, and being more particularly described in Section 2 of that certain Master Deed of Bay Pointe Village Condominium, dated May 25, 1989, and recorded with the Plymouth County Registry of Deeds in Book 9243, Page 214, as amended, of record, including in and by Phasing Amendments recorded with said Registry in Book 15732, Page 278; Book 16950, Page 29; Book 17674, Page 141; Book 18771, Page 73; Book 18982, Page 283; Book 19109, Page 311; Book 19338, Page 130; Book 19446, Page 274; and Book 19848, Page 2.

Said common area is shown on plans recorded with said Master Deed and said Phasing Amendments, including Plan 632 of 1989; Plan 925 of 1997; Plan 823 of 1998; Plan 498 of 1999; Plan 495 of 2000; Plan 711 of 2000; Plan 807 of 2000; Plan 78 of 2001; Plan 127 of 2001; and Plan 302 of 2001.

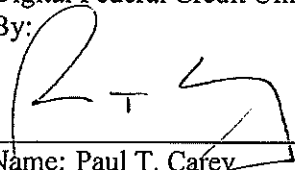
SUBORDINATION OF MORTGAGE

Digital Federal Credit Union, holder of (i) a certain Mortgage and Security Agreement from Bay Pointe Club, LLC to Digital Federal Credit Union ("Digital"), dated February 13, 2012, and recorded with Plymouth County Registry of Deeds ("Registry of Deeds") on February 14, 2012, in Book 40976, Page 214, and filed with Plymouth Registry District of the Land Court ("Registry District") as Document 687954, (ii) a Collateral Assignment of Leases and Rents from said Bay Pointe Club, LLC to Digital, dated February 13, 2012, and recorded with said Registry of Deeds on February 14, 2012 in Book 40976, Page 237, and filed with said Registry District as Document 687955, (iii) a UCC Financing Statement from Bay Pointe Club, LLC to Digital, recorded on February 14, 2012 with said Registry of Deeds in Book 40976, Page 244, and filed with said Registry District as Document 687956, and (iv) a certain Mortgage and Security Agreement from Bay Point Club, LLC to Digital, dated February 13, 2012 and recorded with said Registry of Deeds on February 14, 2012 in Book 40976, Page 280 (collectively, "Mortgage Instruments"), on property located off Onset Avenue in Wareham, Plymouth County, Massachusetts and described in said Mortgage Instruments, and holder of the promissory note(s) and obligations secured thereby, for consideration paid, hereby consents to, and subordinates each of said Mortgage Instruments and the obligations secured thereby to, a certain Easement and Sewer Pump Station Agreement pertaining to said property, by and between Bay Point Club, LLC and Bay Pointe Village Condominium Association, dated \_\_\_\_\_, 2014, recorded with said Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_, and filed with said Registry District as Document No. \_\_\_\_\_ herewith, to the same extent as if the Easement and Sewer Pump Station Agreement had been executed and recorded before the execution and recording of the Mortgage Instruments.

Executed under seal this 14<sup>th</sup> day of March, 2014.

Digital Federal Credit Union

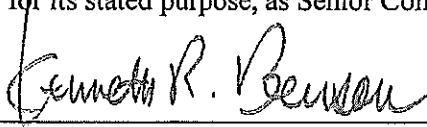
By:

  
Name: Paul T. Carey  
Title: Senior Commercial Lender

COMMONWEALTH OF MASSACHUSETTS

Worcester County, ss.

On this 14th day of March, 2014, before me, the undersigned notary public, personally appeared Paul T. Carey, proved to me through satisfactory evidence of identification, being my own personal knowledge of the identity of the signatory, to be the person whose name is signed above, and acknowledged the foregoing to be signed by him/her as his/her free act an deed and voluntarily for its stated purpose, as Senior Commercial Lender of Digital Federal Credit Union.

  
Notary Public  
My Commission Expires: April 6, 2018  
Notary Public's Name: Kenneth R. Benson

