

(a) To maintain, repair and replace all portions of apartments and the fixtures, equipment, machinery, appliances contained within such apartments, together with all conduits, pipes, ducts, fireplace boxes, metal insulated flues, patios, decks, wiring, secondary sewer pipes, light fixtures (interior and exterior) and compressors serving such units as all of the same are owned by such apartment unit pursuant to paragraph 4 hereof. All such maintenance, repair and/or replacement shall be done by the owner and at the owner's expense. In the event that the apartment owner shall, in the course of said repair etc., do any damage to other apartment units or the common areas, then such damage shall be repaired at the expense of the repairing owner. In the event that the apartment owner discovers any defect or need for repairs for which the Association is to be responsible, such will be promptly reported to the managing agent of the Association.

(b) The apartment owner will not be permitted to alter the color or texture or to repair or otherwise change any portion of the exterior of the apartment unit without the prior written consent of the Association.

#### 14.5 Application of Insurance proceeds

The liability of the Association and the apartment owners for maintenance, repair, and replacement, as aforesaid, shall be reduced to the extent by which said expenses can be paid from the proceeds of insurance carried by the Association insuring the loss occasioning the need for repair or replacement.

#### 14.6 Alteration and Improvement

Except as otherwise reserved to the Developer, no structural alterations will be made in the portions of any apartment to be maintained by the Association, without the prior written consent and approval of the owners of apartments in which such work is to be done and the majority of the Board of Directors of the Association. A copy of floor plans for all of such work, prepared by a licensed architect and/or a licensed professional engineer to practice in the State of Kansas, will be filed with the Register of Deeds and with said Board of Directors prior to the time of the commencement of such, together with a copy of all required building permits.

#### 14.7 Common Areas and Facilities to be Maintained by the Association

The maintenance, repair, replacement and operation of the common areas and facilities will be the sole responsibility of the Association and the costs of doing the same shall be considered as a common expense. Common expenses applicable to all common areas and facilities for this total project owned by the Association until the project is completed, shall be apportioned by assessing 3.57 percent of Building 7



3.58 percent of such expenses to each apartment owner of this condominium until the project is completed on or before the 31st day of December, 1980. Until said apartment project is completed, or the 31st day of December, 1980, all actual common expenses, repair and maintenance incurred for said common areas and facilities for the total project not assessed to apartment owners shall be paid by the Developer. Provided, that the Developer will not be obligated to pay any amounts for reserves, though a pro rata reserve assessment may be assessed against apartment unit owners other than the Developer. Expenses for maintenance, repair, replace and operation of the common areas and facilities applicable to this condominium shall be assessed pursuant to paragraph 7.8 of this Declaration. The liability of the Association for such expenses will be reduced to the extent by which they are met by the proceeds of any insurance received by it. Except as otherwise reserved to the Developer, there shall be no alterations, additions or improvements to the common areas and facilities of the total project without the prior written approval of the record owners of at least two-thirds (2/3) of the apartment units.

#### 14.8 Common Profits and Expenses

Common profits, and the common expenses, shall be distributed to and charged to the apartment unit owners according to the percentage of the undivided interest in the common areas and facilities set forth in paragraph 7.8 of this Declaration, unless such percentage interest shall have been later amended pursuant to the expansion of this condominium. The common expenses which may be charged to the apartment unit owners shall include, but shall not be limited to, insurance, taxes, management fee, utilities, lawn care, snow removal, reserves for repair and/or replacement of streets, pool, and common area facilities, and clubhouse, lighting, sewer, water, accounting, legal, and general maintenance. The Association shall, through its Board of Directors, have exclusive authority to specify what expense items will be included in the assessment from time to time and the amount for each to be assessed. Said expense assessments, including reserve, will be made monthly commencing with the first month following the purchase of a unit by an owner. No apartment unit owner may exempt himself from liability for his contribution or share of the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by the abandonment of his apartment.



#### 14.9 Assessments

The making and collection of assessments against apartment owners for common expenses will be pursuant to this Declaration, the By Laws of the Association, the Kansas Apartment Ownership Act, as amended, and the Management Agreement, as supplemented by the following provisions:

##### (a) Interest: Application of Payments

Assessments and installments on such assessment, which are paid on or before ten (10) days after date when due, will not bear interest; but all sums not paid on or before ten (10) days after the date when due will bear interest at such rate as shall be established by the rules and regulations of the Association. All payments upon accounts received by the Association from the owners will be first applied to interest and then to the assessment payment first due.

##### (b) Lien: For Assessments

The Association shall have a lien upon each apartment unit and upon all tangible personal property located within each apartment unit for any amount of unpaid assessments, together with interest hereinabove provided for, except that such liens will be subordinate to the liens created by mortgages or deeds of trust properly recorded in the office of the Register of Deeds of Shawnee County, Kansas, prior to the recording of claims of liens for such unpaid assessments by the Association. Liens against apartments, approval of liens and effect of part payment shall be provided by K.S.A. 58-3109, as amended of the Kansas Apartment Ownership Act. Likewise, priority of liens shall be governed by K.S.A. 58-3123, as amended of the Kansas Apartment Ownership Act.

##### (c) Assignment of Claim and Lien Rights

The Association will have the right to assign its claim and lien rights for the recovery of any unpaid assessments and interest thereon to the Developer or to any apartment owner or group of apartment owners or to any third party.

##### (d) Joint and Several Liability of the Grantor and Grantee of the Common Expense

The Grantee of an apartment unit shall be held jointly and severally liable with the grantor for all unpaid assessments against the grantor up to the time of the conveyance pursuant to K.S.A. 58-3124. A grantee may, however, not be held liable for any such assessment against the grantor in excess of the amount certified as due by the manager or Board of Directors of the Association delivered to the grantee at the grantee's request. The failure of the Association to file a lien with the office of the Register of Deeds of Shawnee County, Kansas, for past unpaid assessments shall not be the reason for the non-liability of the grantee for such assessments. Provided, that no mortgagee of the owner of



an apartment unit shall be held liable for previous unpaid dues and assessments of common expense which accrued prior to the acquisition of title to such apartment unit by the mortgagee whether by foreclosure or by a deed in lieu of foreclosure.

14.10 Powers of the Developer until the First Board Elected

Until such time as the first Board of Directors of the Association is elected, as herein provided for, the Developer may assess each unit owner a maintenance fee and any such assessment shall be deemed common expenses, as provided by the Apartment Ownership Act of Kansas. All of the rights, duties, and functions of the Board of Directors set forth in this Declaration shall be exercised by the Developer for a period ending thirty (30) days after the election of the first Board of Directors hereunder.

14.11 Association's Right to Enforce Assessments

In addition to any remedies or liens provided by law, if an apartment unit owner is in default of the regular monthly payment of charges and assessments or any special assessment for a period of thirty (30) days, the Board of Directors may bring suit for and on behalf of the Association or as representatives of all apartment unit owners, to enforce collection thereof or to foreclose the lien hereinafter provided; there shall be added to the amount due the cost of said suit, together with legal interest and any other costs authorized by law. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the common areas of the facilities or by the abandonment of his or her apartment unit. Likewise, no apartment unit owner can or shall escape liability for assessments charged pursuant to additional common area facilities developed as the result of the expansion of this condominium pursuant to the expandable provisions herein contained, if the development of such facilities and the expansion was done pursuant to the requirements of the Kansas Apartment Ownership Act and this Declaration. Further, such apartment unit owner cannot escape liability for his or her share of special assessments levied by the Association pursuant to the requisite consent required from apartment unit owners even though such charged apartment unit owner did not vote on the prevailing side of such question. The unpaid common expenses assessed to an apartment unit owner shall constitute a lien against the



unit owned by the unit owner and against such unit owner's interest in the common areas and facilities, all as provided by the Kansas Apartment Ownership Act.

14.12 Association's Statement of Account

Upon ten (10) days notice to the Association and the payment of a reasonable fee fixed by the Board of Directors of the Association, not to exceed Ten Dollars (\$10.00) any unit owner shall be furnished a statement of his or her account setting forth the amount of any unpaid assessments or other charges due and owing from such owner.

14.13 Association's Authority to Adopt and promulgate Rules and Regulations

The Board of Directors may, from time to time, adopt or amend such administrative rules and regulations governing the operation, maintenance, beautification and use of the common areas and facilities and the apartment units, not inconsistent with the terms of this Declaration, as it sees fit, and the apartment unit owners shall conform to, and abide by all of such rules and regulations. Written notice of such rules and regulations shall be given to all apartment unit owners and occupants and mortgagees. A violation of such rules and regulations shall be deemed in violation of the terms of this Declaration. Such administrative rules and regulations shall be effective upon, and may be amended at any time upon the affirmative vote of a majority of the Board of Directors of the Association.

15. ADDITIONAL EASEMENTS FOR UTILITY PURPOSES

Each apartment unit owner shall have an easement in common with the owners of all other apartment units within each building to use all pipes, wires, ducts, flues, cables, conduits, public utility lines and other common elements located in any of the other apartment units and serving his or her apartment unit. Each apartment unit and the common areas within each building shall be subject to an easement in favor of the owners of all other apartment units to use the pipes, wires, ducts, flues, fireplace boxes, metal insulated flues, cables, conduits, public utility lines and other common elements serving such other apartment units and located in such apartment unit. The Board of Directors of the Association shall have the right of access to each apartment to inspect the same, to remove violations therefrom, and to maintain, repair or replace the common elements contained therein or elsewhere in the building to be at reasonable times unless in the case of an emergency.



**16. RECIPROCAL EASEMENTS FOR REPAIR, ETC**

Each apartment unit owner and the Association is hereby granted an easement in other apartment units within the building, limited common areas and in common areas within the building for the purpose of enabling and permitting each apartment unit owner or the Association to repair, maintain, or replace the conduits, pipes, ducts, fireplace boxes, metal insulated flues, wiring, sanitary sewer pipes, light fixtures and compressors owned by the repairing apartment unit owner or the Association as such duty to maintain is provided herein and such ownership is provided for herein. Provided, that the repairing apartment unit owner or Association shall be responsible to repair any damage done to other apartment units or common areas in exercising its rights pursuant to this easement.

**17. ADDITIONAL LIMITATIONS ON ACTIONS BY ASSOCIATION**

Unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned), or owners (other than the Developer) of the individual condominium units have given their prior written approval, the condominium Homeowners Association shall not be entitled to:

(a) By act or omission seek to abandon or terminate the condominium project;

(b) Change the pro rata interest or obligations of any individual condominium unit for the purpose of: (i) levying assessments or changes or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each condominium unit in the common elements, except as such rights are reserved to the Developer pursuant to the provisions of Paragraph 5 hereof and as such rights are determined in Paragraph 7 hereof;

(c) Partition or subdivide any condominium unit;

(d) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common areas. Provided, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the common areas by the condominium project shall not be deemed a transfer within the meaning of this clause.



18. VIOLATION OF DECLARATION

The violation of any restriction, rule or regulation properly adopted by the Board of Directors of the Association, or the breach of any covenant or provision herein contained or contained in the Apartment Ownership Act of Kansas, shall give the Board of Directors of the Association the right, in addition to any other rights provided for in this Declaration or by law:

(a) To enter upon the unit, or any portion of the property upon which, or as to which, such violation or breach exists, and to similarly abate and remove, at the expense of the defaulting apartment unit owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, or such rules and regulations of the Board or the statutes of the State of Kansas, and the Board, or its employees or agents, shall not thereby be deemed guilty in any manner of trespass; or

(b) To enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any violation or breach.

In the event that any unit owner (either by his own conduct or by the conduct of any other occupant of his unit or guest or invitee of his) shall violate any of the covenants of this Declaration, the statutes of the State of Kansas, or the rules and regulations adopted by the Board of Directors of the Association and such violation shall continue for thirty (30) days after notice in writing from the Board of Directors, or shall occur during any thirty (30) day period after written notice or request to cure such violation from the Board of Directors, then the Board of Directors, by unanimous vote, shall have the power to issue to the defaulting unit owner a ten (10) day notice in writing to terminate the rights of the said defaulting apartment unit owner to continue as an apartment unit owner and to continue to occupy, use or control his unit. Provided, a first mortgagee of any apartment unit, upon request, will be entitled to written notification from the Association or its agent of any default in the performance by the apartment unit owner-borrower of any obligation under the condominium documents which is not cured within sixty (60) days. Thereupon an action in equity may be filed by the Board of Directors against the defaulting apartment unit owner for a decree of mandatory injunction against the unit owner or occupants or users or, subject to the prior consent in writing of any mortgagee having a security interest in the unit of the defaulting unit owner,



which consent shall not be unreasonably withheld, in the alternative, a decree declaring the termination of the defaulting apartment unit owner's unit right to occupy, use or control the unit owned by him on account of the breach of covenant and ordering that all the right, title and interest of the apartment unit owner in the property, shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting unit owner from reacquiring his own interest at such judicial sale or by virtue of the exercise of any right of redemption which may be established. The proceeds of any such judicial sale shall first be paid to discharge court costs and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting apartment unit owner in said decree. Any balance of proceeds after satisfaction of such charges and any unpaid assessments hereunder or any liens may be paid to the unit owner. Upon the confirmation of such sale, the purchase thereof shall thereupon be entitled to a deed to the unit and immediate possession of the unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration, the laws of the State of Kansas and the Kansas Apartment Ownership Act and the Rules and Regulations of the Board of Directors of the Pheasant Run Condominium Homeowners Association, Inc.

**19. RIGHT OF ENTRY TO APARTMENT UNITS BY BOARD OF DIRECTORS**

The Board of Directors, or its agents or employees, may enter into any apartment unit, when necessary, in connection with its obligation to repair, maintain, reconstruct, paint or otherwise inspect for compliance with the Rules and Regulations of this Declaration, such apartment unit or the common facilities located therein. Such entry shall be made with as little inconvenience to the unit owners as practicable, and such right shall be in addition and on the same terms as those rights set out heretofore in paragraph 15 hereof. Any damage caused by such entrance and repair, etc., by the Board of Directors, shall be repaired by the Board at the expense of the maintenance fund of the Association.



## 20. UNDERTAKING OF GRANTEES

Each grantee of the Developer, or of any apartment unit owner or mortgagee, by acceptance of a deed of conveyance, or each purchaser under any contract for sale of an apartment unit, accepts the same, subject to all restrictions, easements, conditions, covenants, reservations, liens and charges, and the rights and powers created in reserve by this Declaration and the provisions of the Kansas Apartment Ownership Act, as at any time amended, and all easements, rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in said land and shall inure to the benefit of such owner in a like manner, as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance. Further, the failure of any deed of any conveyance to recite specifically any of the provisions or reservations or obligations of this Declaration, the laws of the Apartment Ownership Act or the Rules and Regulations of the Association, shall not be a basis for any grantee or other interest holder in any apartment unit not being obligated to abide by the provisions of all of such documents to the same full degree and extent as any other apartment unit owner.

## 21. CONDEMNATION

### 21.1 Common Areas and Facilities

In the event that any of the common areas or facilities of this condominium project or any expansion thereof shall be condemned by any entity with the power of eminent domain, then the Homeowners Association shall be the agent for all of the apartment unit owners in regard to all matters and pertaining to said condemnation. Further, any award, payment, settlement or other compensation paid pursuant to said condemnation for such common areas and facilities shall be held for the benefit of the apartment unit owners, mortgagees and other parties in interest as their interests may appear. The Board of Directors of the Association shall determine the matter of replacement or relocation of common areas taken. In the event that such common areas are to be replaced and relocated, then the proceeds received from the condemnation shall be



first applied to the cost of replacement and relocation. In the event such funds received exceed the cost of relocation and replacement or if, in the sole discretion of at least two-thirds (2/3) of the owners, such common areas are not to be replaced, then the Association shall determine, through its Board of Directors, whether to pay out the proceeds to the unit owners and their mortgagees as their interests may appear or to retain said funds in the common expense fund.

#### 21.2 Apartment Units

To the extent that any apartment unit shall be condemned the Association, through its Board of Directors, with the assistance of a licensed architect or engineer, shall determine what portion of the award or payment from the condemnation is attributable to the individual apartment unit. Following such determination, that amount allocated shall be paid out to the apartment unit owner, mortgagee and other parties in interest as their interests may appear.

#### 21.3 Association as Party

The Pheasant Run Homeowners Association, Inc. is hereby irrevocably designated and appointed by the Developer, apartment unit owners, their mortgagees and other parties in interest as the sole and real party in interest to receive any award, judgment, payment and consideration paid pursuant to any condemnation proceeding against the common areas and/or apartment units. Provided, that such Association shall hold such funds in accordance with the other provisions of this section and for the benefit of the apartment unit owners and mortgagees in the case of common area funds as their interests appear in paragraph 7.8 hereof, or as they may later be changed by amended declarations due to expansion of this condominium.

#### 22. FAILURE TO ENFORCE

No terms, obligations, covenants, conditions, restrictions or provisions imposed hereby or contained herein, shall be abrogated or waived or diminished in any regard by any failure to enforce, no matter how many violations or breaches of such may occur.

#### 23. SERVICE OF PROCESS

The person to receive Service of Process is John E. Stumbo, attorney-at-law, 2222 West 29th Street, Topeka, Kansas 66611, or such other person as may, from time



to time, be designated by the Pheasant Run Condominium Homeowners Association, Inc. subject to compliance with the Apartment Ownership Act of Kansas.

#### 24. NOTICES

Notices required or permitted to be given to the Board of Directors of the Pheasant Run Condominium Homeowners Association, Inc. or any apartment unit owner, may be delivered to any member of the Board or such apartment unit owner, either personally or by mail, addressed to such Board member, or apartment unit owner, at his or her unit, or the normal business address of the Board of Directors of the Homeowners Association.

Notice is required to be given to any devisee or personal representative of a deceased apartment unit owner and may be delivered either personally or by mail to such party at his, her, or its address appearing in the records of the court wherein the estate of such deceased apartment owner is being administered.

#### 25. AMENDMENTS TO THIS DECLARATION

This Declaration may be amended, changed, or modified by an instrument in writing setting forth such amendment, change or modification signed and acknowledged by all of the members of the Board of Directors of the Pheasant Run Condominium Homeowners Association, Inc., or by at least two-thirds (2/3) of the apartment unit owners, and by the Developer. Provided, that the Developer's consent and signature will not be required to any such amendment in the event that any one of the three prerequisite conditions for amendment to the By Laws of the Association shall have occurred, all as set forth in Paragraph 11.4 of the By Laws of the Association as set out in Exhibit "G" attached hereto. Provided, however, that the Developer's prior written consent shall be required to any amendment which seeks to modify or affect the rights, privileges or obligations of the Developer, irrespective of whether said Developer still owns an interest in any apartment units completed or under construction.

#### 26. SEVERABILITY

The invalidity of any restrictions hereby imposed, or of any provision hereof, or of any part of such restriction or provision, shall not impair or affect in any manner



the validity, enforceability or effect of the rest of this Declaration and all of the terms hereof are declared to be severable. Provided, that such remaining terms and provisions shall be in compliance with the laws of the State of Kansas and the Kansas Apartment Ownership Act.

27. TITLES

The various sections of this Declaration contain descriptive titles. Such titles are included in this Declaration for convenience purposes and are not meant to be a substantive part of this Declaration. Any inconsistency between the provisions of the various sections of this Declaration and the titles preceding them shall be resolved in favor of the substantive provisions as the titles are included for convenience purposes only.

28. CONSTRUCTION

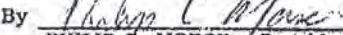
The provisions of this Declaration shall be liberally construed to effectuate and carry out the purpose of creating a uniform plan for the development and operation of the described real estate as a condominium development pursuant to the Kansas Apartment Ownership Act.

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

PHEASANT RUN COMPANY, a Kansas General Partnership

By   
BENJAMIN F. BLAIR, Partner

PHIL MORSE HOMES, INC. - Partner

By   
PHILIP C. MORSE - President

By   
STANLEY R. METZGER - Partner



STATE OF KANSAS           )  
                                  )   SS:  
COUNTY OF SHAWNEE       )

BE IT REMEMBERED, that on this 16 day of May, 1979, before me, the undersigned, a Notary Public in and for the county and state aforesaid, came BENJAMIN F. BLAIR and STANLEY R. METZGER, individually, as partners of PHEASANT RUN COMPANY, a Kansas General Partnership, and PHILIP C. MORSE, as President of PHIL MORSE HOMES, INC., a partner of PHEASANT RUN COMPANY, a Kansas General Partnership, and said BENJAMIN F. BLAIR and STANLEY R. METZGER are personally known to me to be the same persons who executed the within instrument of writing, and such persons duly acknowledged the execution of the same, and that PHILIP C. MORSE, President of PHIL MORSE HOMES, INC. is personally known to me to be such officer, and who is personally known to me to be the same person who executed, as such officer, the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.



Pamela E. Ward  
NOTARY PUBLIC

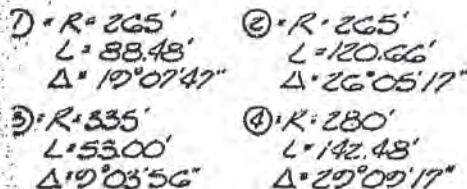
2-28-83

Book 5 ... 157



No. 2932-B-1

**Description:** See attached sheet 2/2

Book 5 Page 158



A tract of land located in the northwest quarter of Section 9, Township 12 South, Range 15 East of the 6th P.M., City of Topeka, Shawnee County, Kansas, more particularly described as follows:

COMMENCING at the southwest corner of Lot 13, Block A, John O. Allen Subdivision No. 2, City of Topeka, Shawnee County, Kansas; thence on Az 359 degrees 11 minutes 30 seconds, 153.52 feet along the West line of said lot; thence 88.48 feet northerly along said West line around a curve to the right having a radius of 265.00 feet and a central angle of 19 degrees 07 minutes 47 seconds to the POINT OF BEGINNING; thence continuing 120.66 feet northeasterly along said West line around a curve to the right having a radius of 265.00 feet and a central angle of 26 degrees 05 minutes 17 seconds; thence on Az 44 degrees 24 minutes 34 seconds, 293.40 feet along said West line; thence 53.00 feet northeasterly along said West line to the northwest corner of said lot around a curve to the left having a radius of 335.00 feet and a central angle of 9 degrees 03 minutes 56 seconds; thence on Az 120 degrees 12 minutes 22 seconds, 34.51 feet along the North line of said lot; thence 162.46 feet easterly along said North line around a curve to the left having a radius of 280.00 feet and a central angle of 29 degrees 09 minutes 17 seconds; thence on Az 177 degrees 58 minutes 55 seconds, 99.40 feet; thence on Az 87 degrees 58 minutes 55 seconds, 40.28 feet; thence on Az 177 degrees 58 minutes 55 seconds, 181.00 feet; thence on Az 267 degrees 58 minutes 55 seconds, 220.64 feet; thence on Az 177 degrees 58 minutes 55 seconds, 44.07 feet; thence on Az 238 degrees 05 minutes 20 seconds, 42.00 feet; thence on Az 328 degrees 05 minutes 20 seconds, 74.98 feet; thence on Az 267 degrees 58 minutes 55 seconds, 223.11 feet to the point of beginning, containing 2.70 acres, more or less.



NOTE - A 12"  
UNDERGROUND  
ARE EXISTING  
OF WESTPORT

WESTPORT

467.18 N  
148.50 E

Constr. G\* conc. entr. to City Stds.

Existing Storm Sewer 7

R/W-13328

293.40'

505.19 N  
241.73 F:

25' B.S.L. 7

5849

BLDG. NO. 2

58/59

ELDO NO.

402.46 N  
514.69 E.

Az.  $224^{\circ} 24' 44''$

374-2-2  
332-02-2

3/10 13155.42 =  
5/10 1767

357-41 N  
265-66

TRANSFORMER PAD

101.72

Page 160 of 5853  
Exhibit A-1



NOTE: A 12" WATER LINE AND AN UNDERGROUND TELEPHONE LINE ARE EXISTING IN THE WEST R/W OF WESTPORTY DRIVE.

ORT

# DRIVE

24 25 50 75 25 25 50

Az.  $44^{\circ} 24' 34''$

Constr. G\* conc. entr. to City Stds.

Existing Storm Sewer ✓

4' Sidewalk

293,40'

35' R/W →

505.19 A!  
241.73 F.

25' B.S.L. 2

5849

B L D G NO 2

585

BLDG. NO.

58

BLDG. NO. 1

40246. N  
314.62 E

Az.  $224^{\circ} 24' 44''$

18. Sin. Sin \*

37-62-2

g/d. 13+55.42 =  
g/d. 104

5853

Exhibit A-2

5857



NOTE: A 12" WATER LINE AND AN UNDERGROUND TELEPHONE LINE ARE EXISTING IN THE WEST R/W OF WESTPORT DRIVE.

DRIVE

Az.  $44^{\circ} 24' 34''$

Existing 32' B.B. Pavement

4' Sidewalk

35' R/W

DG. NO. 2

5851

BLDG. NO. 3

5855

58

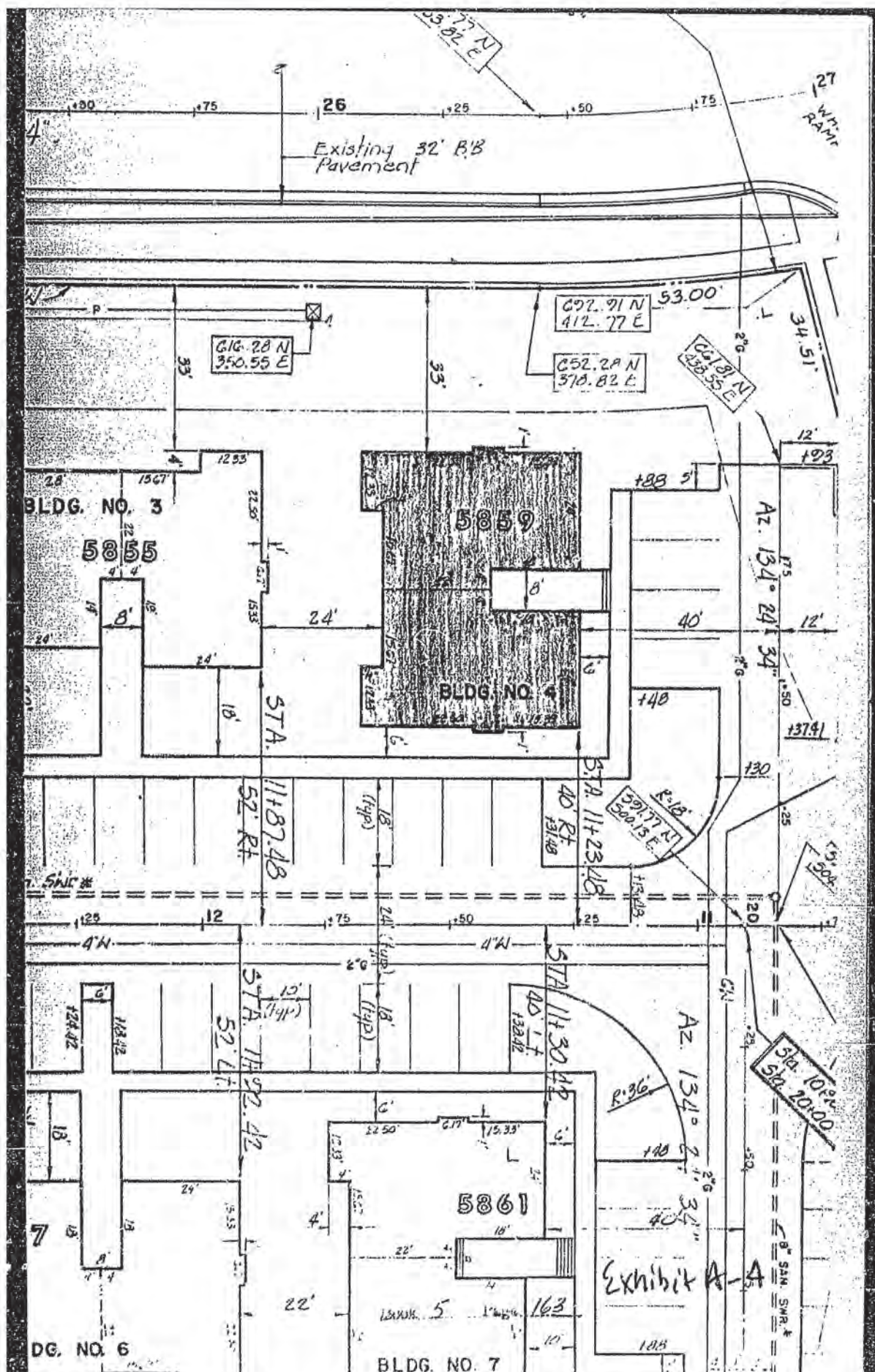
BLDG.

Exhibit A-3

5853

58







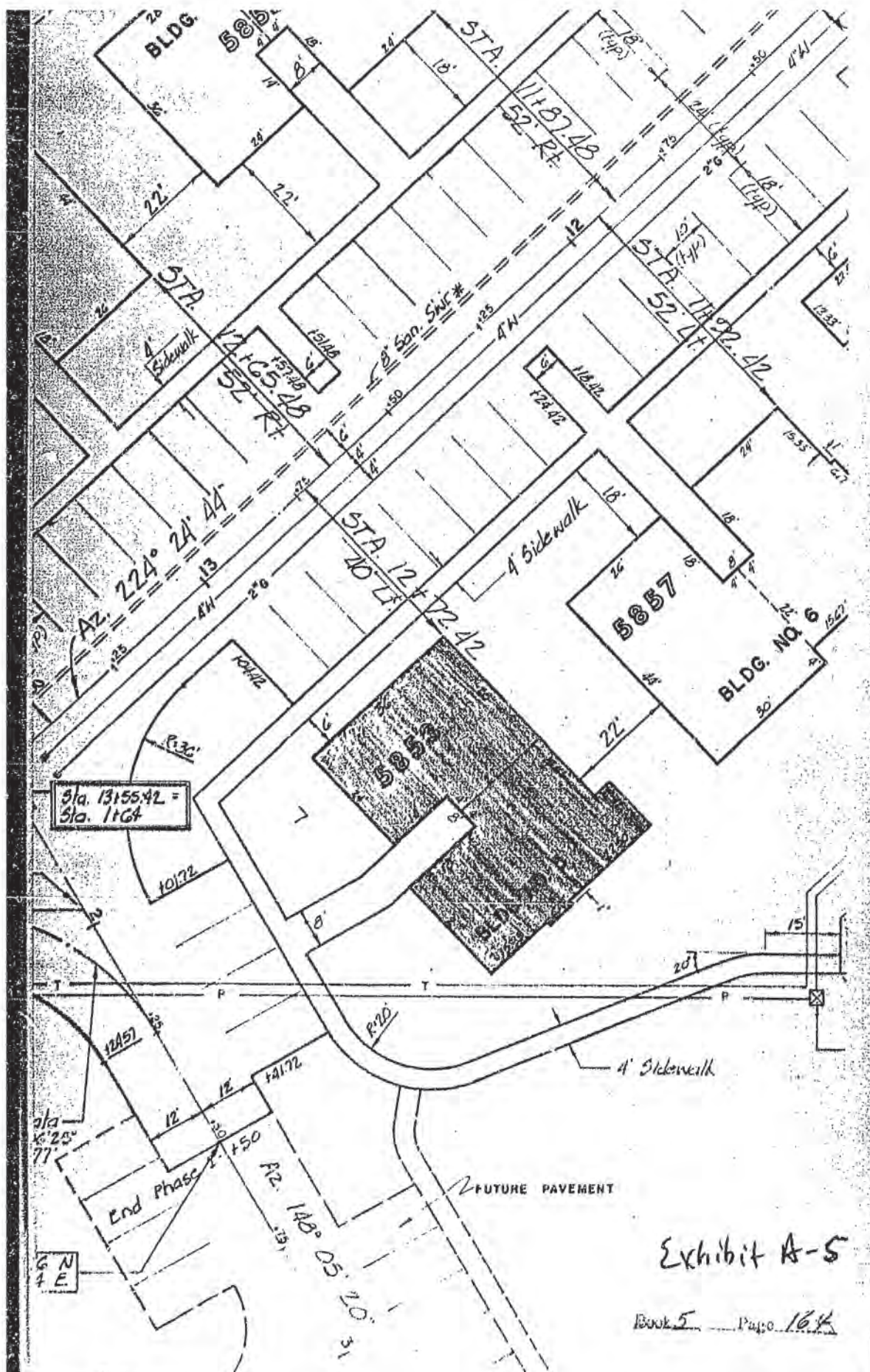
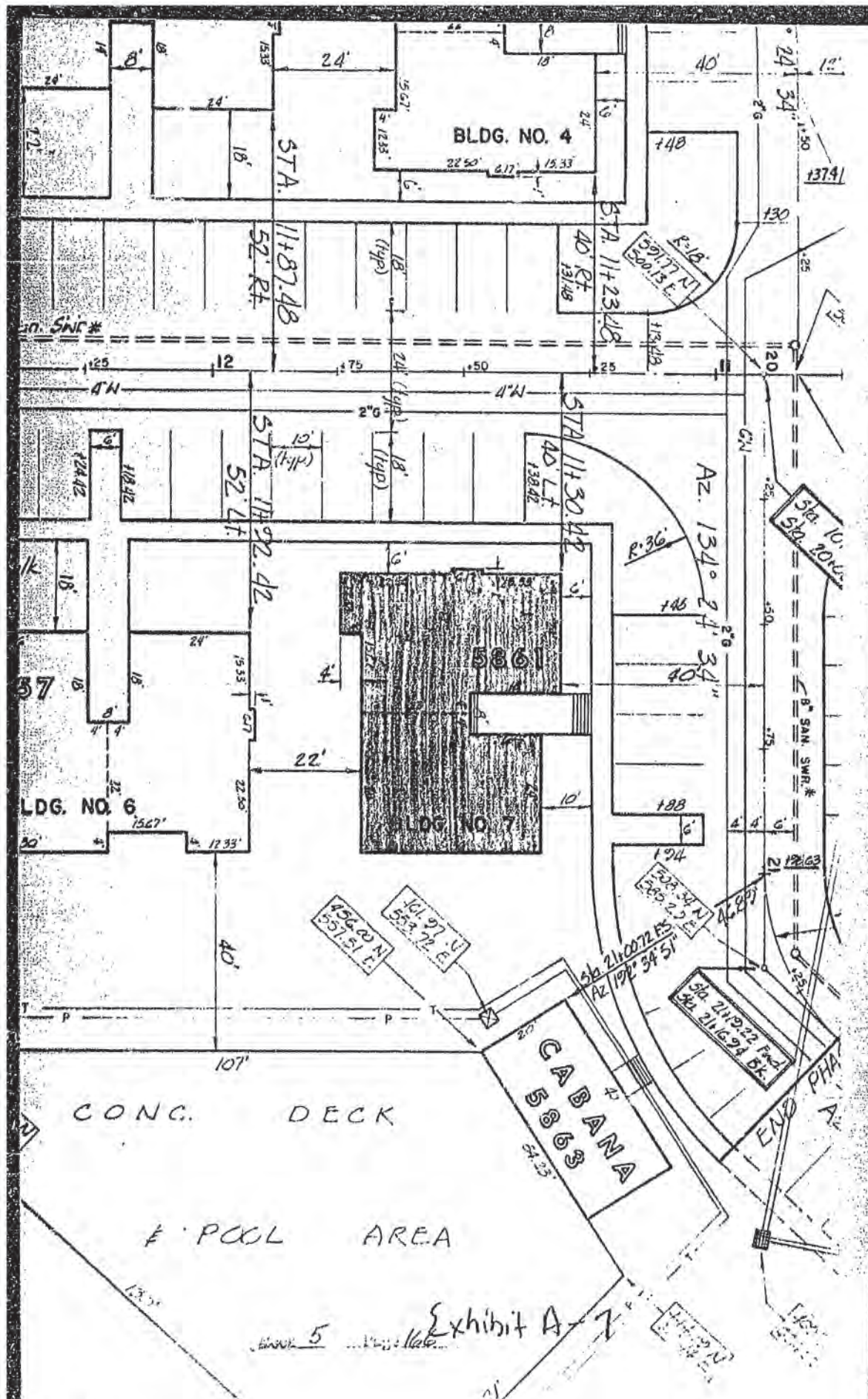


Exhibit A-5

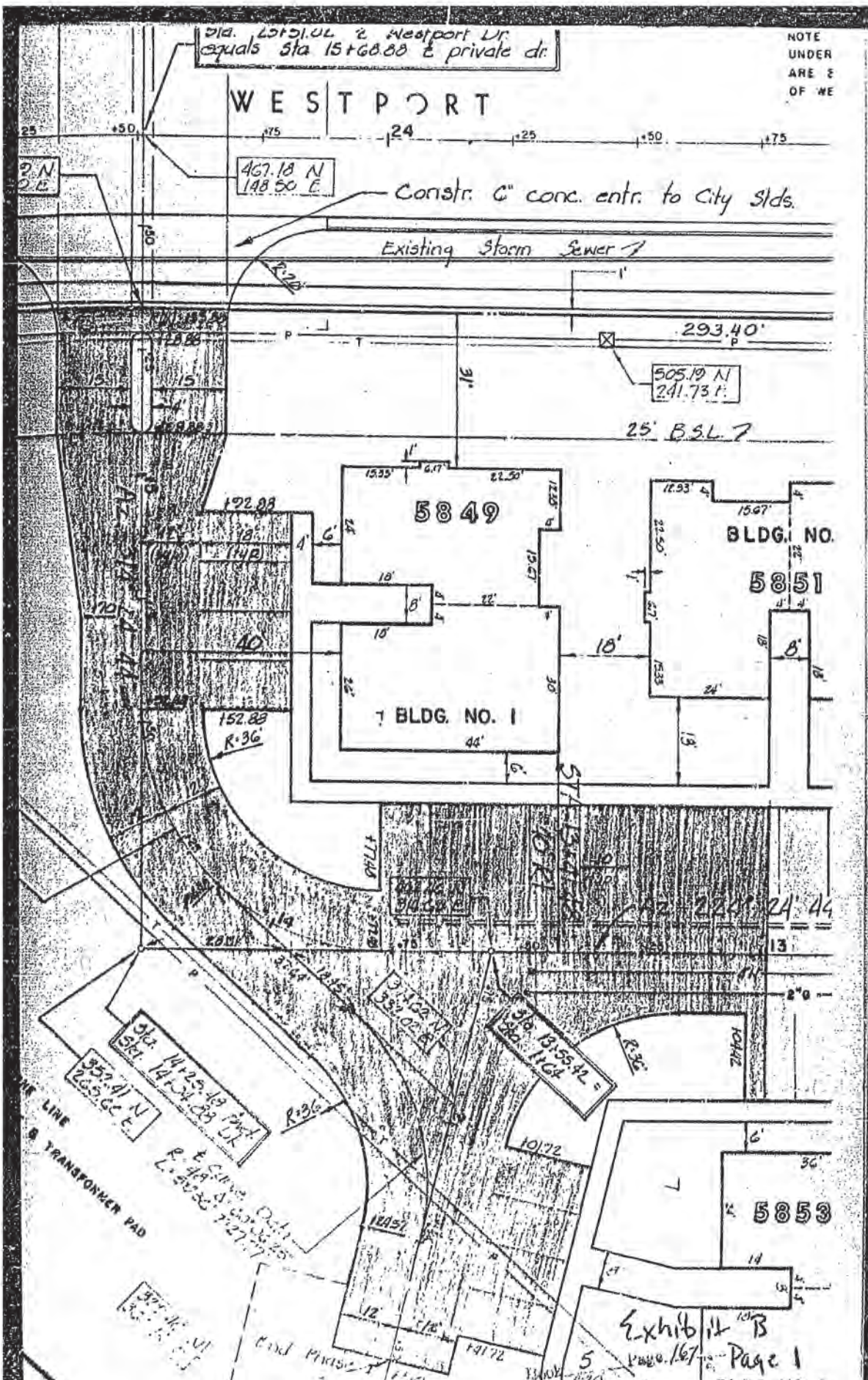












Sta. 15+51.00 & Westport Dr.  
equals Sta 15+68.88 & private dr.

NOTE  
UNDER  
ARE 2  
OF WE

# WESTPORT

467.18 N  
148.50 E

Const. 6" conc. entr. to City Sids.

Existing Storm Sewer

293.40'

505.19 N  
241.73 E

25' B.S.L. 7

5849

BLDG. NO.  
5851

1 BLDG. NO. 1

5853

Exhibit B  
Page 1



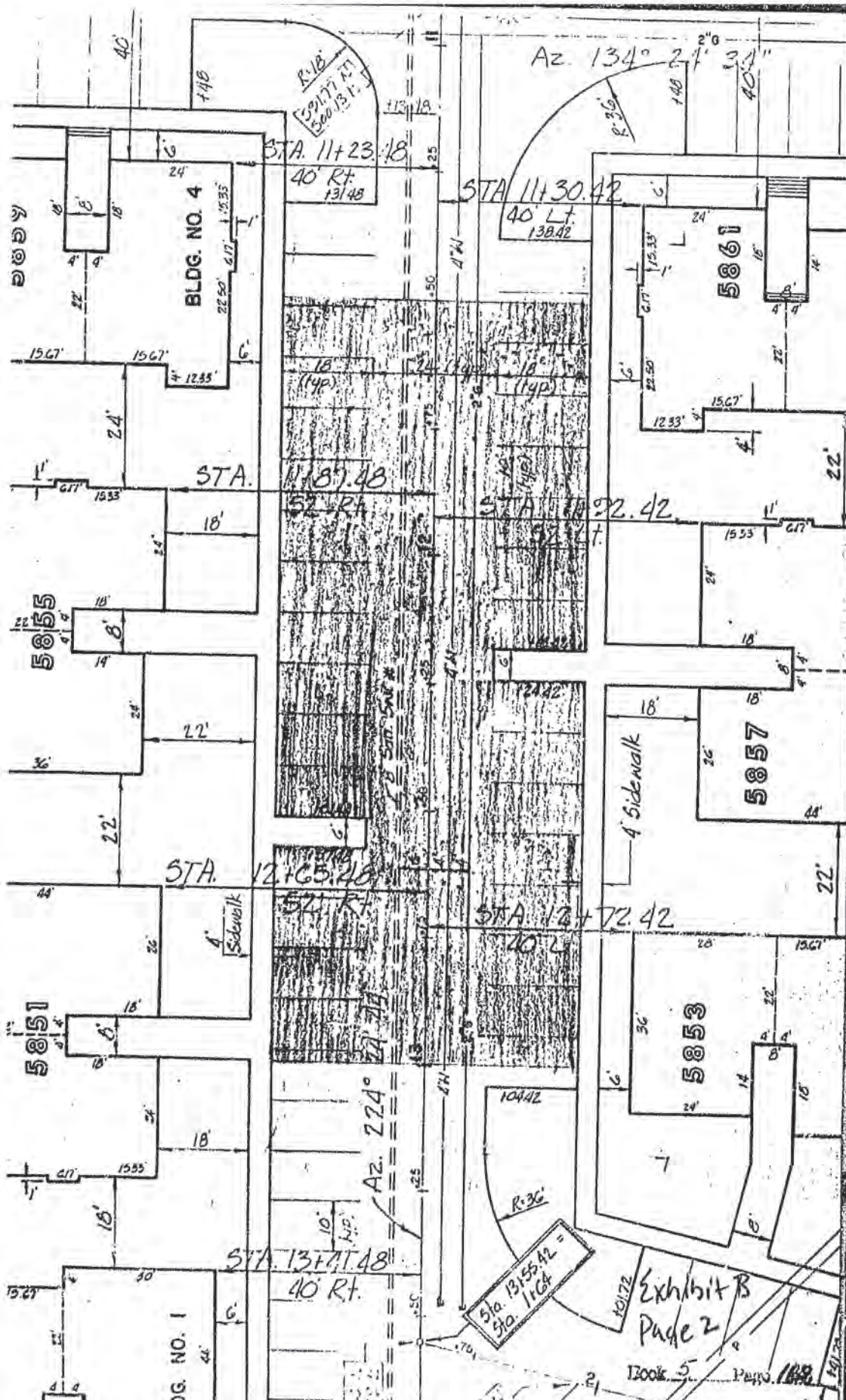
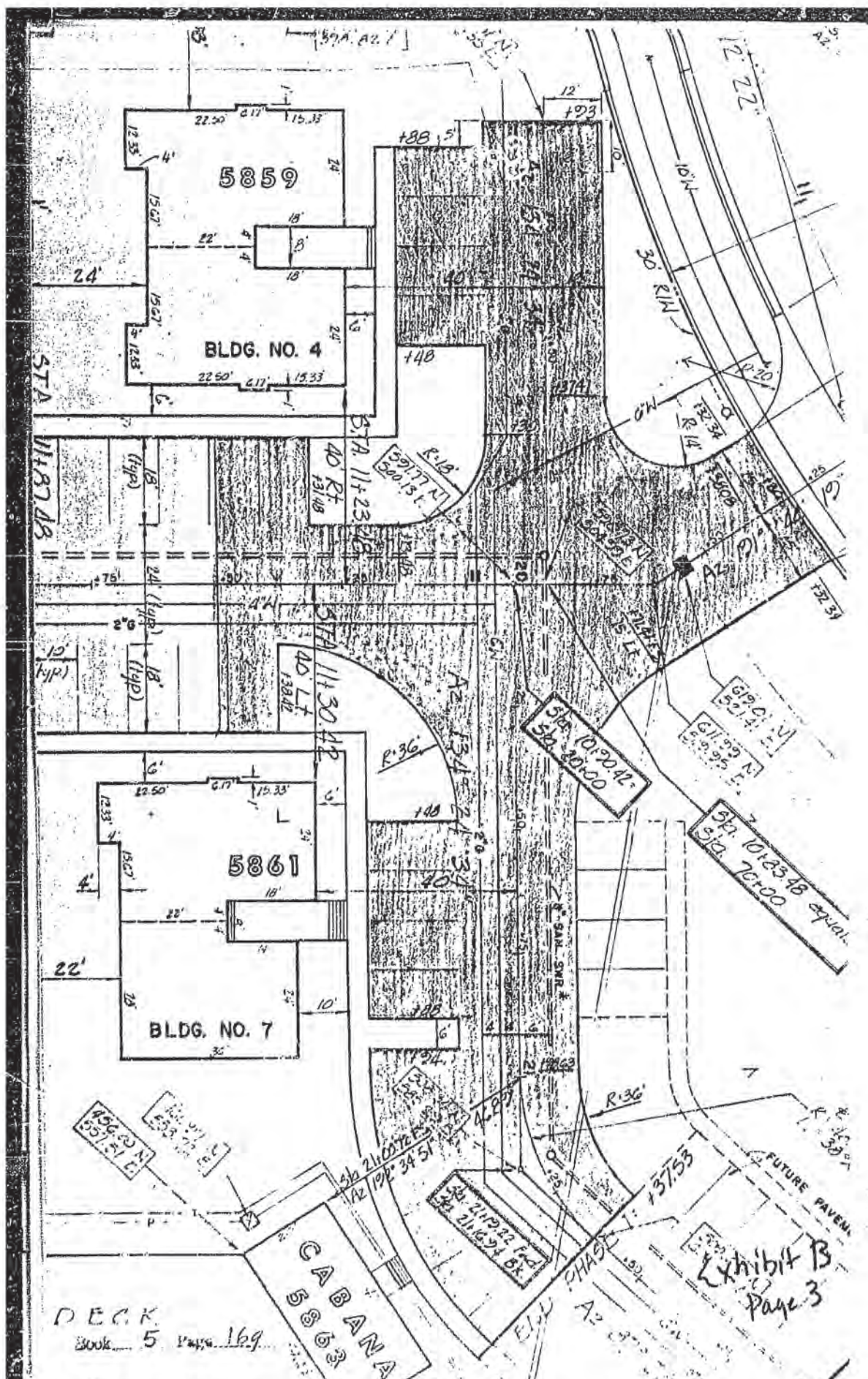


Exhibit B  
Page 2

Book 5 Page 168







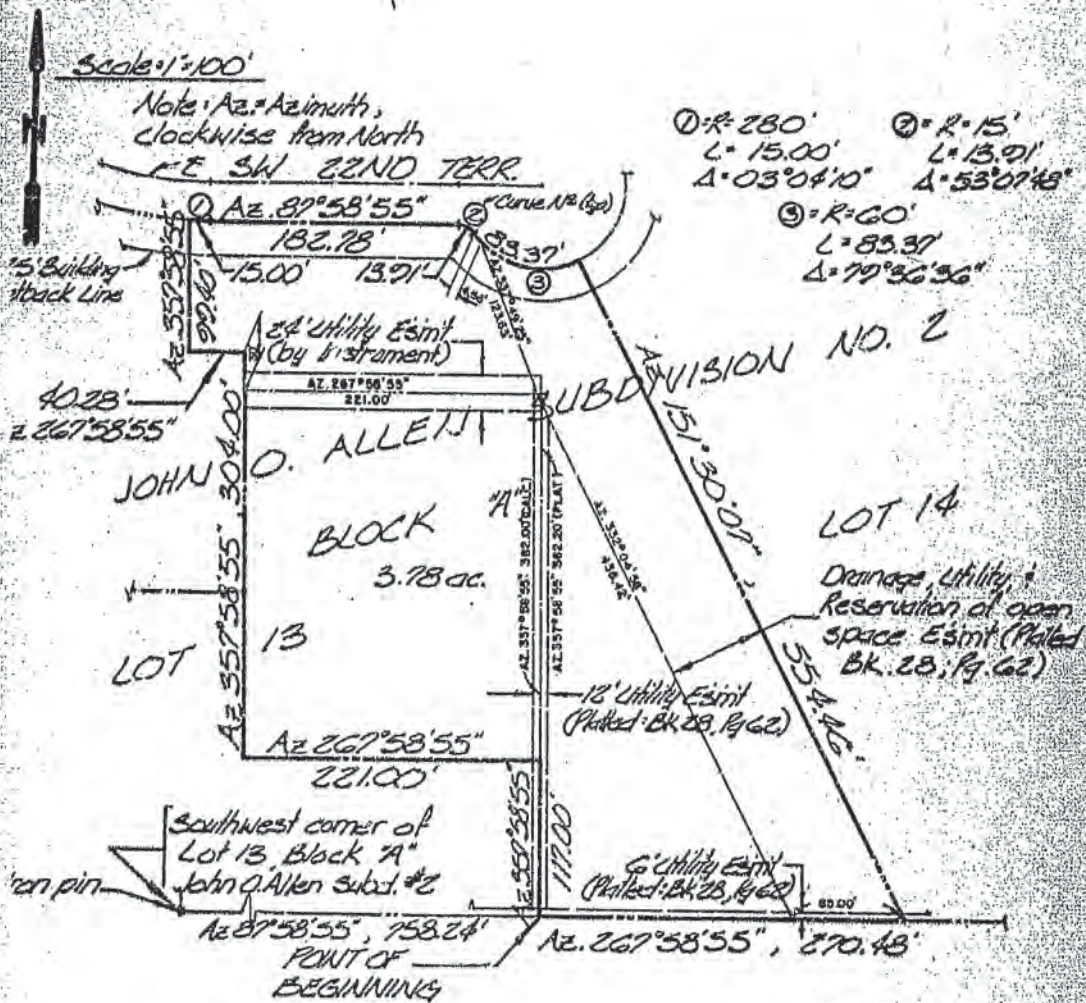
# PLAT OF SURVEY

No. 2938-B-Z

Ordered By John Stumbo

Survey Date May 15 1979 Party Engler/Cole Field Notes 2938-F

Description: See attached sheet. 2/2



I hereby certify that the above plat is the true findings of a survey of the above described property.

Signature of Surveyor

Date MAY 15 1979

Book 5 Page 170

Exhibit C



A tract of land located in the northwest quarter of Section 9, Township 12 South, Range 15 East of the 6th P.M., City of Topeka, Shawnee County, Kansas, more particularly described as follows:

COMMENCING at the southwest corner of lot 13, Block A, John O. Allen Sub-division No. 2, City of Topeka, Shawnee County, Kansas; thence on Az 87 degrees 58 minutes 55 seconds, 758.24 feet along the South line of said lot to the centerline of a utility easement, said point being the POINT OF BEGINNING; thence on Az 357 degrees 58 minutes 55 seconds, 117.00 feet; thence on Az 267 degrees 58 minutes 55 seconds, 221.00 feet; thence on Az 357 degrees 58 minutes 55 seconds, 304.00 feet; thence on Az 267 degrees 58 minutes 55 seconds, 40.28 feet; thence on Az 357 degrees 58 minutes 55 seconds, 99.40 feet to a point on the North line of said lot; thence 15.00 feet easterly along said North line around a curve to the left having a radius of 280.00 feet, a central angle of 3 degrees 04 minutes 10 seconds, a chord of 15.00 feet and a chord Az of 89 degrees 31 minutes 00 seconds; thence on Az 87 degrees 58 minutes 55 seconds, 182.78 feet along said North line; thence 13.91 feet southeasterly along said North line around a curve to the right having a radius of 15.00 feet and a central angle of 53 degrees 07 minutes 48 seconds; thence 83.37 feet along said North line to the northeast corner of said lot around a curve to the left having a radius of 60.00 feet and a central angle of 79 degrees 36 minutes 36 seconds; thence on Az 151 degrees 30 minutes 07 seconds, 554.46 feet along the East line of said lot to the southeast corner of said lot; thence on Az 267 degrees 58 minutes 55 seconds, 270.48 feet along said South line to the point of beginning and containing 3.78 acres, more or less.



# PLAT OF SURVEY

No. 2938-B-4

Ordered By John Stumbo  
 Survey Date May 15 19 79 Party Engler/Komala Field Notes 2938-F

THE SOUTHWEST CORNER  
 OF LOT 13, BLOCK 'A'  
 JOHN O. ALLEN SUBD. No. 2

SEE ATTACHED  
 SHEET FOR  
 LEGAL  
 DESCRIPTION  
 2/2

THE SOUTH LINE OF J.O. ALLEN SUBD. No. 2

AZ. 267° 58' 55" 521.00'

G.U.E.  
 (PLATTED BK 28, PG. 62)

G.U.E. (PLATTED BK 28, PG. 62)

AZ. 177° 58' 55" 117.00'

AZ. 177° 58' 55" 123.00'

AZ. 67° 58' 55" 221.00'

AZ. 87° 58' 55" 220.64'

AZ. 57° 58' 55" 44.07'

AZ. 58° 05' 20" 51.55'

AZ. 357° 58' 55" 150.31'

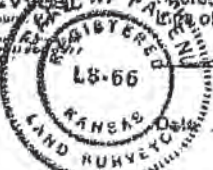
POINT OF BEGINNING

2.12 Acres

LOT 13, BLOCK 'A', JOHN O. ALLEN SUBD. No. 2

SCALE 1" = 50'  
 AZ. = AZIMUTHS CLOCKWISE  
 FROM NORTH

**Bartlett & Vasek R. P.**  
 Consulting Engineers  
 Civil Engineers, Land & Surveyors  
 310 West 23rd St. Suite 400 Kansas City, MO 64108  
 PH: 513-241-1111 FAX: 513-241-1112



I hereby certify that the above plat is the true find-  
 ings of a survey of the above described property.  
Richard A. Redman  
 Signature of Surveyor

MAY 15 19 79

Book 5 Page 172

1/2  
 Exhibit  
 D



A tract of land located in the northwest quarter of Section 9, Township 12 South, Range 15 East of the 6th P.M., City of Topeka, Shawnee County, Kansas, more particularly described as follows:

COMMENCING at the southwest corner of Lot 13, Block A, John O. Allen Subdivision No. 2, City of Topeka, Shawnee County, Kansas; thence on Az 87 degrees 58 minutes 55 seconds, 237.24 feet along the South line of said lot to the POINT OF BEGINNING; thence on Az 357 degrees 58 minutes 55 seconds, 150.31 feet; thence on Az 58 degrees 05 minutes 20 seconds, 91.53 feet; thence on Az 357 degrees 58 minutes 55 seconds, 44.07 feet; thence on Az 87 degrees 58 minutes 55 seconds, 220.64 feet; thence on Az 177 degrees 58 minutes 55 seconds, 123.00 feet; thence on Az 87 degrees 58 minutes 55 seconds, 221.00 feet to the centerline of a utility easement; thence on Az 177 degrees 58 minutes 55 seconds, 117.00 feet along said centerline to a point on said South line; thence on Az 267 degrees 58 minutes 55 seconds, 521.00 feet along said South line to the point of beginning, containing 2.12 acres, more or less.



# PLAT OF SURVEY

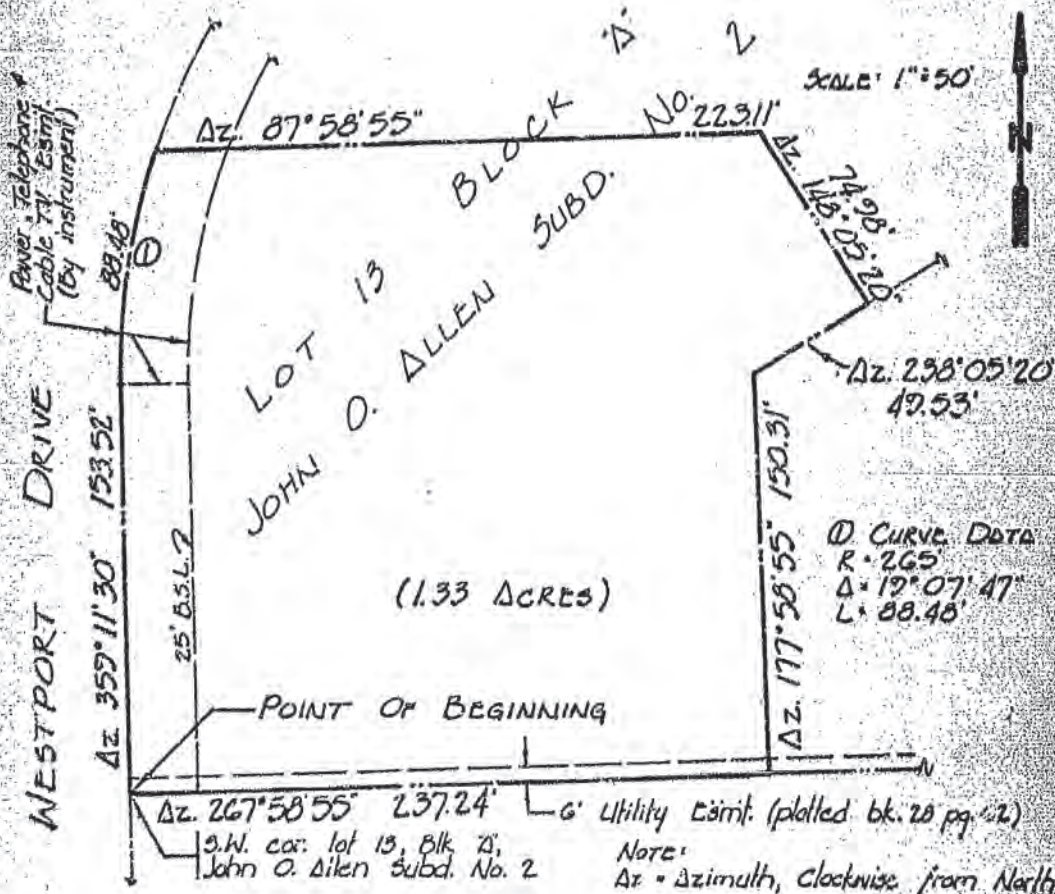
No. 2938-B-3

Ordered By John Stumbo

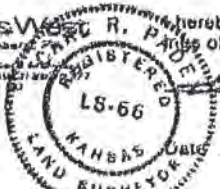
Survey Date April 15, 1979 Party Engler/Dayton Field Notes 2938-F

Description: A tract of land located in the northwest quarter of Section 9, Township 12 South, Range 15 East of the 6th P.M., City of Topeka, Shawnee County, Kansas, more particularly described as follows:

BEGINNING at the southwest corner of Lot 13, Block A, John O. Allen Sub-division No. 2, City of Topeka, Shawnee County, Kansas; thence on Az 359 degrees 11 minutes 30 seconds, 153.52 feet along the West line of said lot; thence 88.48 feet northerly along said West line around a curve to the right having a radius of 265.00 feet and a central angle of 19 degrees 07 minutes 47 seconds; thence on Az 87 degrees 58 minutes 55 seconds, 223.11 feet; thence on Az 148 degrees 05 minutes 20 seconds, 49.53 feet; thence on Az 238 degrees 05 minutes 20 seconds, 49.53 feet; thence on Az 177 degrees 58 minutes 55 seconds, 150.31 feet to a point on the South line of said lot; thence on Az 267 degrees 58 minutes 55 seconds, 237.24 feet along said South line to the point of beginning, containing 1.33 acres, more or less.



**BW** Bertlett & West  
Consulting Engineers  
214 West 22nd St. Topeka, KS 66604  
BRANCH OFFICE: Mankato, MN



I hereby certify that the above plat is the true and correct copy of a survey of the above described property.

Signature of Surveyor

APR 15 1979

1979

5

Page

174

Exhibit E



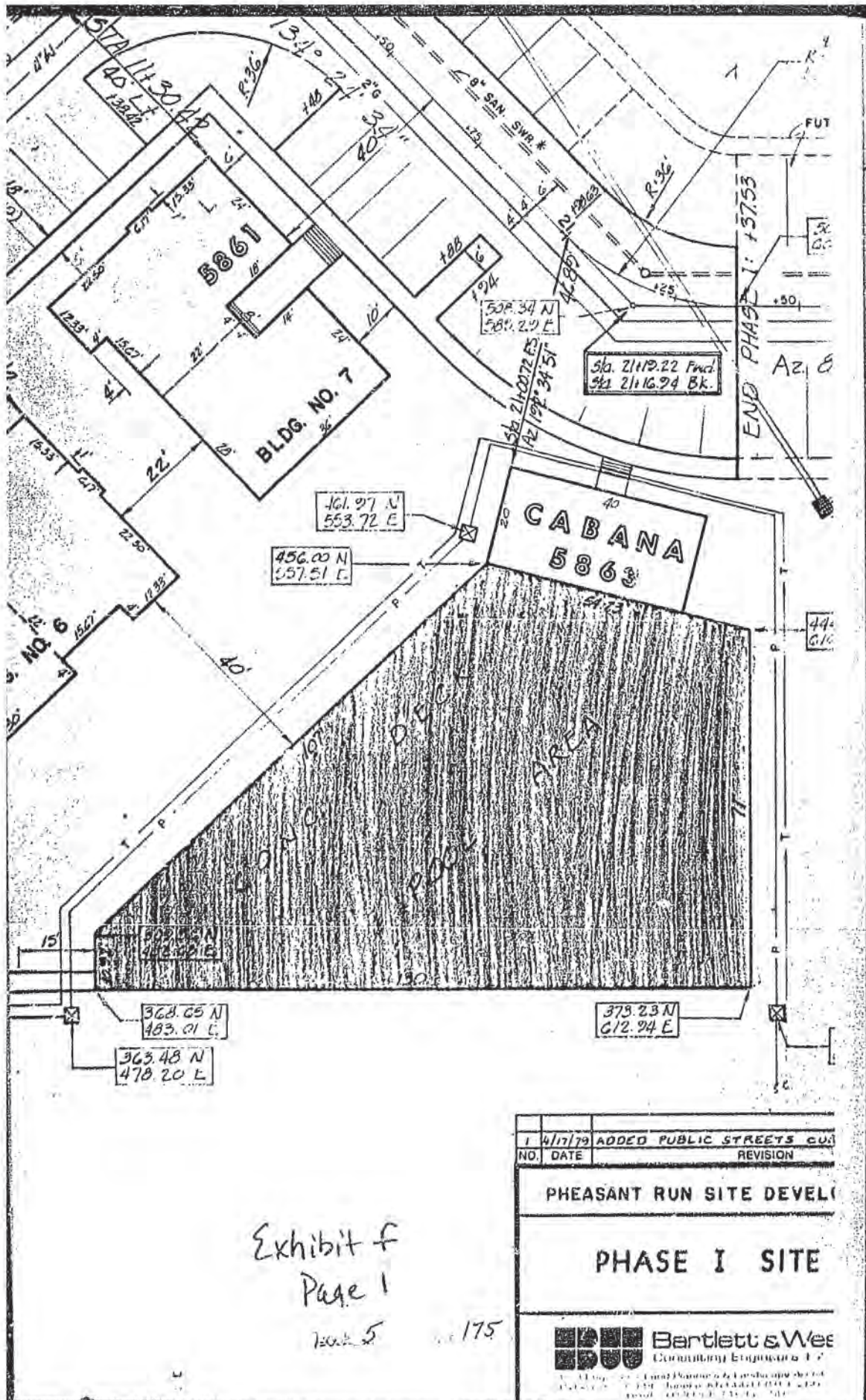


Exhibit f  
Page 1

Book 5

175

NO.	DATE	REVISION
1	4/17/79	ADDED PUBLIC STREETS CUL

PHEASANT RUN SITE DEVELOPMENT

PHASE I SITE



**Bartlett & Weiss**  
Consulting Engineers P.C.

11111 11111 11111 11111 11111 11111 11111 11111 11111 11111  
11111 11111 11111 11111 11111 11111 11111 11111 11111 11111  
11111 11111 11111 11111 11111 11111 11111 11111 11111 11111



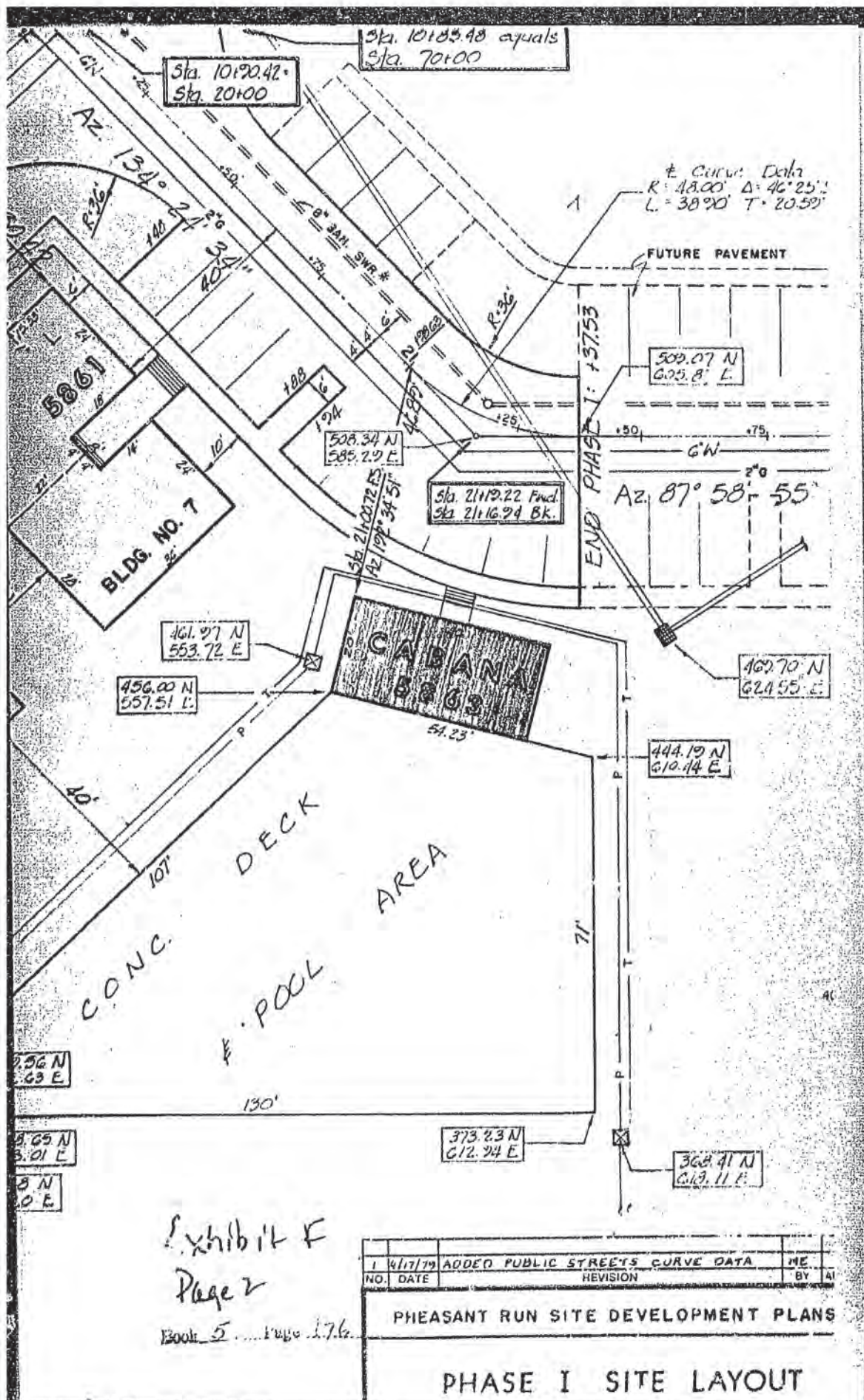


Exhibit F  
Page 2

Book 5 Page 176



BY LAWS  
OF  
PHEASANT RUN CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.,  
a Kansas NON-PROFIT Corporation

1. PURPOSE OF CORPORATION. The following are the By Laws for Pheasant Run Condominium Homeowners Association, Inc., organized in the State of Kansas as a corporation Not-For-Profit pursuant to the general corporation laws of the State of Kansas. The corporation has established, through its incorporators, appropriate Articles of Incorporation for filing with the Secretary of State and the issuance of the corporate Charter by the Secretary of State all of which has been recorded in the office of the Register of Deeds of Shawnee County, Kansas, the county in which the principal place of business of this corporation is to be located.

These By Laws are developed pursuant to the requirements of the corporation laws of the State of Kansas but, also, to satisfy those requirements contained in the Kansas Apartment Ownership Act found at K.S.A. 58-3101 through 58-3129. The corporation has been organized to operate, maintain, and otherwise look after certain condominium apartment units and the common areas appurtenant thereto which apartment units and common areas are to be developed and constructed by the developer, Pheasant Run Company, on property located in Lot 13, Block A, in the John O. Allen Subdivision No. 2 to the City of Topeka, Shawnee County, Kansas.

It is anticipated that there will be developed and constructed on the real estate up to a maximum of one hundred twenty-four (124) apartment units which will be offered for sale by the developer as a part of a condominium project pursuant to the Declaration of Condominium herein filed to which these By Laws have been attached as an Exhibit and pursuant to subsequent amendments to that Declaration of Condominium under the expandable condominium provisions of the Kansas Apartment Ownership Act.

2. LOCATION OF CORPORATE OFFICE AND PRINCIPAL OFFICERS. The office of the corporation will at the present time be located at 2222 West 29th Street, Topeka, Kansas 66611; provided, that such office may from time to time be relocated



within the City of Topeka. The initial operating officers of the corporation will be located at that address.

3. MEMBERS OF CORPORATION. The members of this corporation shall be the owners from time to time of the condominium unit apartments. The conditions pertaining to the termination of membership or the succession to membership of subsequent owners of apartment units prescribed in the Articles of Incorporation of this corporation.

3.1 MEMBERSHIP MEETINGS. The first annual meeting of the corporation shall be called by the developer upon ten (10) days advance written notice to the members, and not later than May 1, 1983.

3.2 SUBSEQUENT ANNUAL MEETINGS OF THE MEMBERS. The subsequent annual meetings of the members following the first annual meeting shall be held at 7:30 o'clock P.M. on the second Monday in February of each year for the purpose of electing Directors and transacting any other business authorized to be transacted by the members; provided, however, if that day is a legal holiday, the meeting will be held at the same hour on the next day that is not a legal holiday.

3.3 SPECIAL MEMBERS' MEETINGS. The special members' meetings will be held whenever called by the President or by a majority of the Board of Directors; and must be called by such officers upon receipt of a written request from that number of members of the Association entitled to cast one-third (1/3) of the votes of the entire membership.

3.4 NOTICES OF MEETINGS. The notices of all meetings of the membership stating the time and place and the general agenda for which the meeting is being called will be given by the President or Secretary or Managing Agent of the corporation, unless advance notice is waived by the members. Such notice will be in writing to each member at his or her address as it appears on the books of the Association, and will be mailed not less than ten (10) nor more than sixty (60) days prior to the date of the intended meeting. Proof of such mailing will be given by the Affidavit in writing of the person giving the notice. Notice of a meeting may be waived before or after the meeting or by attendance at the meeting.

3.5 QUORUM. A quorum at the members' meeting will consist of a majority



of the votes of the entire membership. The acts approved by a majority of the votes present at a meeting at which a quorum is present will constitute the acts of the members, except when approval by a greater number of members is required by the provisions of the Kansas Apartment Ownership Act, the Declaration of Condominium, or any amendments, or the Articles of Incorporation and By Laws of this corporation.

4. VOTING RIGHTS OF MEMBERS. The owner of each constructed condominium apartment unit will be entitled to one vote; and if one owner owns more than one apartment, then he, she or it will be entitled to one vote for each apartment unit owned upon which substantial construction has been completed.

If an apartment unit is owned by one person, his or her right to vote will be established by the record title to his or her apartment. If an apartment is owned by more than one person, or is under lease, the person entitled to cast the vote for the apartment will be designated by a certificate signed by all of the record owners of the apartment and filed with the Secretary of the Association. If an apartment is owned by a corporation, or by a partnership, the person entitled to cast the vote for the apartment will be designated by a certificate signed by the President or managing partner of the corporation or partnership. Such certificates will be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the apartment concerned. The Association and its general membership shall be entitled to rely upon the validity of any such certificate given until the Association, through its officers or directors, are notified that the certificate has been revoked or superseded by a subsequent certificate or a change in ownership. A certificate designating the person entitled to cast the vote for an apartment may be revoked by any owner of an apartment. If such a certificate is not on file designating the person who is entitled to cast the vote for that apartment unit, then that apartment unit shall not be entitled to vote in determining questions put to the membership or for the purpose of establishing the requirements of a quorum.

4.1 PROXIES FOR VOTING. Proxies will be permitted and any person entitled to vote may, by written proxy, designate another to cast their vote on all questions delineated in said proxy. Provided, that such proxy must be in writing and must be filed before the appointed time of the meeting with the Secretary or the Assistant Secretary of the corporation. Provided, further, that if the proxy is to be limited in its scope, then any such limitation must be designated in the written proxy itself and in the absence of any such limitation, the corporation and its member-



ship shall be entitled to assume and permit the person holding the proxy to vote on all questions put to the membership at that meeting.

5. SPECIAL PROVISIONS RELATIVE TO MEMBERSHIP MEETING. In the event that an attempted membership meeting shall fail for the reason of a lack of quorum, then those members present at such an attempted meeting, whether in person or by proxy, shall have the power to adjourn that meeting from time to time until a lawful quorum for a proper meeting can be present in person or proxy. No other business other than the convening and adjournment of an attempted meeting can lawfully be conducted by members attending a meeting in person or by proxy, if there is an inadequate quorum present.

5.1 ORDER OF BUSINESS AT MEMBERS' MEETING. The following is an outline of the general agenda which will be used at all membership meetings, whether they be annual meetings or special meetings; provided, that if there are to be special issues brought before the membership at a meeting, then the agenda for that meeting shall be included in the written notice given to the membership in advance of the meeting as hereinabove provided.

- a. Election of Chairman and presider for the meeting;
- b. The calling of the roll and the filing and review and certification of written proxies;
- c. The filing of an affidavit or other proof of notice or waiver of notices of the meeting;
- d. The ascertainment of a quorum for the proper conduct of the meeting by the Secretary and a certification thereof by the President;
- e. The reading and disposal of any unapproved minutes;
- f. The reports of officers;
- g. The reports of committees and managing agents;
- h. The election of directors;
- i. Any unfinished old business;
- j. New business; and
- k. Adjournment

6. SPECIAL PROVISION ON DIRECTORS' CONSENT TO ACTION TAKEN BY MEMBERS. The above stated membership meetings and authority of the membership meetings to transact business and affairs for the corporation shall be subject to the prior approval in writing of the Board of Directors of the corporation after the action is voted by the membership, but before it may be carried out until such time as the developer has completed all of the contemplated improvements and has closed all of the sales of all of the condominium apartment units in all of the condominium apartment buildings established pursuant to the Declaration of Condominium herein



filed, and the anticipated amendments to the Declaration of Condominium to complete the three additional expandable phases of this condominium up to a total of one hundred twenty-four (124) condominium unit apartments, or until the developer elects to terminate its control in writing of the Association, or until April 1, 1986, whichever event shall occur first.

7. DIRECTORS. The membership of the Board of Directors and the affairs of the Association will be managed by a Board of not less than three (3) nor more than seven (7) Directors, the exact number of which is to be determined ahead of the annual election of Directors for the ensuing year.

7.1 ELECTION OF DIRECTORS. The election of the Directors will be conducted in the following manner:

a. The election of the Directors will be held at the annual meeting of the members of the Association.

b. A nominating committee of five (5) members will be appointed by the Board of Directors, not less than fifteen (15) days prior to the annual members' meeting. The committee will nominate one (1) person for each Director then serving. Nominations for additional directorships created at the meeting will be made from the floor at the annual meeting and other nominations may be made from the floor.

c. The election will be by written ballot, unless the need for written ballot is dispensed of by the unanimous consent of the members attending the meeting. The election will be by a plurality of the votes cast, each person voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There will be no cumulative voting allowed.

d. Except as to vacancies provided by removal of Directors by members, vacancies in the Board of Directors occurring between annual meetings of members will be filled by the remaining Directors.

e. Any Director may be removed by concurrence of two-thirds (2/3) of the votes of the entire membership at a special meeting of the members called for that purpose. Provided, that such special meeting shall be pursuant to written notice given, as hereinabove required, unless such notice is waived. Vacancy in the Board of Directors so created will be filled by members of the Association at that same meeting.

f. Provided, however, that until the developer has completed all of the contemplated, as set forth in the Declaration of Condominium herein filed or amendments to that Declaration pursuant to the expandable provisions in the Declaration, and has closed the sale of all of the anticipated one hundred twenty-four (124) condominium unit apartments in the apartment buildings established by the developer on the land at this time or in the future, or until it elects to terminate its control of the Association or until April 1, 1986, whichever of those events shall first occur, the first Directors of the Association will serve, and, in the event of vacancy, the remaining Directors will fill such vacancies, and if there are no remaining Directors, the vacancies will be filled by the developer. Therefore, until all one hundred twenty-four (124) apartment units are constructed and the sales of those units are closed by the developer or until the developer elects to terminate its control, or until April 1, 1986, or until whichever of those events shall first occur, there shall be no election of Directors by



the membership, but the original Board of Directors designated in the Articles of Incorporation of this corporation shall continue to serve unless replaced by the remaining Directors.

g. The term of each Director's service will extend until the next annual meeting of the members and, subsequently, until his or her successor is duly elected and qualified or until he or she is removed in the manner elsewhere provided for.

h. The organizational meeting of each newly elected Board of Directors will be held within ten (10) days from the date of their election at such time and place that shall be fixed by the Directors at the meeting in which they were elected; and no further notice of such organizational meeting will be necessary.

i. Regular meetings of the Board of Directors may be held at such time and place as will be determined, from time to time, by a majority of the Directors. Notice of regular meetings will be given to each Director, personally or by mail, telephone or telegraph, at least three (3) days prior to the day of each meeting.

j. Special meetings of the Directors may be called by the President and must be called by the Secretary or Assistant Secretary at the written request of one-third of the Directors. Not less than three (3) days notice of the meeting will be given personally or by mail, telephone or telegraph, which notice will state the time, place and purpose of the meeting.

k. Any Director may waive notice of the meeting before or after the meeting and such waiver will be deemed equivalent to the giving of notice. Any Director attending a regular or special meeting of the Board of Directors, unless otherwise designating, shall be deemed to have waived any notice of the meeting by his or her attendance at the meeting.

l. A quorum at the Directors' meeting will consist of a majority of the entire Board of Directors. The acts approved by a majority of those present at a meeting and which a quorum is present, will constitute the acts of the Board of Directors, except when approval by a greater number of Directors is required by the Declarations of Condominium, the Articles of Incorporation of this corporation, or these By Laws.

m. If at any meeting of the Board of Directors there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business that might have been transacted at the meeting as originally called, may be transacted without further notice.

n. The joinder of a Director in the action of meeting by signing or concurring of the minutes of that meeting will constitute the presence of such Director in his affirmative vote for the purpose of determining a quorum.

o. The presiding officer of Directors' meetings will be the chairman of the Board of Directors, if such an officer has been elected; if none, the President will preside. In the absence of the presiding officer, the Directors present will designate one of their number to preside.

p. The order of business at the Directors' meeting will be:



- a. Calling of the roll;
- b. Proof of notice and filing of any affidavits of the notice of the meeting;
- c. Reading and disposal of unapproved minutes;
- d. The reports of officers and committees;
- e. Reports of managing agents;
- f. Election of officers;
- g. Any unfinished old business;
- h. New business; and
- i. Adjournment.

7.2 DIRECTORS' FEES. The Directors will receive no fees for their services.

7.3 DUTIES OF ASSOCIATION. All powers and duties of the Association will be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by the apartment unit owners when such is specifically herein or elsewhere required.

8. OFFICERS. The executive officers of the Association will be a President, who will be a Director, a Vice-President, a Secretary and a Treasurer, all of whom will be elected annually by the Board of Directors and who may be preemptorily removed by a vote of the Directors at any meeting. Any person may hold two or more offices, except the President shall not also be the Vice-President. The Board of Directors, from time to time, will elect such other officers and designate their powers and duties as the Board of Directors shall find to be required to manage the affairs of the Association.

8.1 PRESIDENT. The President will be the chief executive officer of the Association. He will have all of the powers and duties usually vested in the office of President of an Association including, but not limited to, the power to appoint committees from among the members from time to time, as he or she, in his or her discretion, may determine appropriate to assist in the conduct of the affairs of the Association.

8.2 VICE-PRESIDENT. The Vice-President in the absence or disability of the President will exercise the powers and perform the duties of the President. He or she will assist the President generally and will exercise such other powers and perform such other duties as shall be prescribed from time to time by the Board of Directors.

8.3 SECRETARY. The Secretary will keep the minutes of all of the proceedings of the Directors and the members. He or she will attend to the giving and serving of all notices to the members and directors and other notices required by law. He will have the custody of the seal of the Association and affix it to instruments requiring a seal when duly signed. He or she will keep the records of the Association,



except those of the Treasurer, and will perform all other duties incident to the office of Secretary of the Association as may be required by the Directors or the President.

8.4 TREASURER. The Treasurer will have custody of all the property of the Association, including funds, securities and evidences of indebtedness, he or she will keep the books of the Association in accordance with good accounting practices; and he or she will perform all other duties incident to the office of Treasurer.

8.5 COMPENSATION. No compensation will be paid to officers of the Association for their services.

9. FISCAL MANAGEMENT. Separate condominium units established by the developer upon the land described in the Declaration of Condominium and any amendments hereafter made to said Declaration will, in fiscal matters, be managed as a single entity, separate accounts need not be maintained for the separate condominium units; and all sums collected from assessments may be commingled into a single fund, or divided into more than one fund, as determined, from time to time, by the Board of Directors. However, such fiscal management will be governed by the provisions of any agreements made by the Association for the management and operation of the condominium units, during the terms of such agreements. In the event that such agreements are not made, or if they do not contain provisions for the fiscal management, or at the termination of any such agreements, fiscal management will be as set forth in the Declaration of Condominiums and any amendments thereto and these By Laws as supplemented by the following:

9.1 ACCOUNTS. The receipts and expenditures of the Association will be credited and charged to such accounts as shall be appropriate. All expenditures will be common expenses.

9.2 BUDGET. The Board of Directors will adopt a combined budget, as to all of said separate condominium units, for each fiscal year that will include the estimated funds required to defray the current expenses and to provide and maintain funds for any other accounts and reserves, according to good accounting practices. The budget may provide for any of the following items, but shall not be limited to the following, insurance, taxes, management fee, utilities, lawn care, snow removal, reserves for repair and/or replacement of streets, pool and common area facilities, and clubhouse,



lighting, sewer, water, accounting, legal and general maintenance. Copies of the budget and proposed assessments will be transmitted to each member on or before December 1, preceding the year for which the budget is made. If the budget is amended subsequently, a copy of the amended budget will be furnished to each member.

9.3 PROVISO. Provided, however, that until the developer has completed all of the contemplated improvements and has closed the sales of all of the one hundred twenty-four (124) condominium apartment units in all the condominium apartment buildings established by it in the Declaration of Condominium herein filed or subsequent amendments to that Declaration of Condominium, as anticipated, or until the developer elects to terminate its control of the Association, or until April 1, 1986, whichever event shall first occur, the Board of Directors may omit from the budget all allowances for contingencies and reserves.

10. ASSESSMENTS. Assessments against the individual condominium apartment units for their share of the items of the budget will be made for the calendar year annually in advance on or before December 30, preceding the year for which the assessments were made. Provided, that partial year assessments may be made for any unit sold either by the developer or other seller at the time the sale is closed at any time during the year. Such assessments will be due in equal monthly installments on the first day of each month of the year for which the assessments are made. If an annual assessment is not made as required, an assessment will be presumed to have been made in the amount of the last prior assessment and monthly installments on such assessments will be due upon each installment payment made until changed by an amended assessment. In the event the annual assessments prove to be insufficient, the budget and assessments may be amended at any time by the Board of Directors; and the unpaid assessment for the remaining portion of the calendar year for which the amended assessment is made will be due in equal monthly installments on the first day of each month remaining in the year for which such amended assessments is made. Provided, that the initial Board of Directors may, in its sole discretion, determine when the first annual assessment and, therefore, monthly installments will be



assessed and payable. Provided, that no assessments may be levied against any apartment unit until said unit is sold by the Developer after construction and said sale is closed or until said unit is leased by the Developer, whichever event shall first occur. Provided, further, that the Developer will be required to comply with the provisions of Paragraph 14.7 of the Declaration of Condominium filed herewith.

**9.5 ACCELERATION OF ASSESSMENT INSTALLMENTS UPON DEFAULT**

If an apartment shall be in default in the payment of an installment upon an assessment, the Board of Directors may accelerate the remaining installments of the assessment upon notice to the apartment owner, and then the unpaid balance of the assessment will come due upon the date stated in the notice, but not less than ten (10) days after the delivery of the notice to the apartment owner, or not less than twenty (20) days after the mailing of such notice to him or her by registered or certified mail, return receipt requested, postage prepaid, whichever shall first occur.

**9.6 ASSESSMENTS FOR EMERGENCIES**. Assessments for common expenses of emergencies that cannot be paid from the annual assessments for common expenses will be made only after notice of the need for such is given to the members. After such notice and upon approval by more than one-half (1/2) of the members, the assessment will become effective, it will be due after thirty (30) days notice in such manner as the Board of Directors of the Association may from time to time require in their notice of assessment.

**9.7 DEPOSITORY**. The depository of the Association will be such bank or banks or savings and loans as shall be designated from time to time by the Directors and in which the moneys of the Association will be deposited; provided, that all such banks and/or savings and loans shall be federally insured institutions. Withdrawals of moneys from such accounts will be only by checks assigned by such persons as authorized by the Directors.

**9.8 PAYMENT OF ASSESSMENTS**. The Board of Directors may from time to time require that the individual unit apartment owners pay their monthly installment of the annual assessment in check payable to such bank and/or savings and loan



institution as shall constitute a depository of the Association.

9.9 WITHDRAWAL OF FUNDS. The Board of Directors may from time to time establish such procedures as it shall deem appropriate for the purpose of maximizing earnings on idle funds of the Association and fiscal control by limiting those persons authorized to withdraw funds and/or other limitations on checking account balances of the Association. Provided, that at least three (3) director signatures shall be required for authority to withdraw funds from a depository in any single amount in excess of FIVE THOUSAND DOLLARS (\$5,000.00).

10. PARLIAMENTARY RULES. Roberts Rules of Order, its latest edition, will govern the conduct of all meetings of the Association, whether they be of the members or of the Directors; provided, that such rules of order shall not in any way conflict with the Declaration of Condominium, amended Declarations to Condominium, if any, the Articles of Incorporation of this Association, and these By Laws.

11. AMENDMENTS TO THESE BY LAWS. These By Laws may be amended in the following manner:

11.1 NOTICE. Notice of the subject matter of a proposed amendment will be included in the notice of any meeting in which a proposed amendment is considered.

11.2 RESOLUTION. A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the Secretary at, or prior to the meeting. Except as elsewhere provided, such approvals must be either by:

a. Not less than seventy-five percent (75%) of the entire membership of the Board of Directors and not less than seventy-five percent (75%) of the votes of the entire membership of the Association; or

b. Not less than eighty percent (80%) of the votes of the entire membership of the Association; or

c. Until the first election of Directors, only by all of the Directors; provided, the amendment does not increase the number of apartments or alter the boundaries of the common areas.



11.3 PROVISO. Provided, however, that no amendment will discriminate against any member, unless the member so affected shall consent; and no amendment will effect or impair the validity or priority of any mortgage covering any apartment unit or any undivided interest in the common areas or affect or impair the rights of a lessor under any leases made by the Association.

11.4 FURTHER PROVISO. Provided, however, that until the developer has completed all of the contemplated improvements of apartment units and common areas and has closed the sales of all of the one hundred twenty-four (124) apartment units in the buildings in which they are located in the Declaration of Condominium herein filed and anticipated amendments to said Declaration or until the developer elects to terminate its control of the Association or until April 1, 1986, whichever of the first three events shall first occur, the prior consent of the initial Board of Directors shall be required before any amendment to these By Laws shall be effective.

The foregoing provisions were adopted as the initial By Laws of Pheasant Run Condominium Homeowners Association, Inc., a Kansas non-profit corporation, at the first meeting of the initial Board of Directors on the 11<sup>th</sup> day of May, 1979.

  
STANLEY R. METZGER - Secretary

APPROVED:

  
BENJAMIN F. BLAIR - President



MANAGEMENT AGREEMENT  
OF  
PHEASANT RUN CONDOMINIUM PROJECT

May THIS MANAGEMENT AGREEMENT, made and entered into this 14<sup>th</sup> day of May, 1979, by and between PHEASANT RUN CONDOMINIUM HOMEOWNERS ASSOCIATION, Inc., a Kansas Not-for Profit Corporation, hereinafter referred to as the "Association" and PHEASANT RUN COMPANY, a general partnership pursuant to the laws of Kansas, hereinafter referred to as the "Developer".

WITNESSETH:

WHEREAS, there has been previously filed and recorded with the Register of Deeds of Shawnee County, Kansas, a Declaration of Condominium with Exhibits attached by the Developer declaring that certain property located in Lot 13, in Block A, John O. Allen Subdivision No. 2 to the City of Topeka, Kansas, as being condominium property; and,

WHEREAS, in conjunction with said Declaration of Condominium, the Developer has previously caused to be created and organized a Kansas Not-for-Profit Corporation known as Pheasant Run Condominium Homeowners Association, Inc. with the corporate Charter issued by the Secretary of State dated the 14<sup>th</sup> day of May, 1979, which said Charter and Articles of Incorporation were recorded in Book Four, at Page 85, in the Office of the Register of Deeds of Shawnee County, Kansas, on the 16 day of MAY, 1979; and,

WHEREAS, that following the organization and creation of the Association and pursuant to the requirements of the Kansas Apartment Ownership Act, appropriate By Laws for said Association were attached as an Exhibit to the previously mentioned Declaration of Condominium and recorded in the Office of the Register of Deeds of Shawnee County, Kansas; and,

WHEREAS, the parties desire to enter into an appropriate Management Agreement whereby the Association delegates and contracts with the Developer for the performance of certain obligations heretofore existing and belonging to the Association in the conduct of the affairs of the Pheasant Run Condominium Project.

IT IS THEREFORE BY THE PARTIES MUTUALLY UNDERSTOOD AND AGREED for and in consideration of their mutual promises and covenants herein contained, as follows:

1. That the initial Declaration of Condominium anticipates that the Developer will cause to be constructed and offer for sale twenty-eight (28) condominium apartment units to be located in seven (7) buildings, with four (4) units in each building, on the property described in the Declaration of Condominium. Further, that the Developer will cause to be constructed certain common areas and facilities on said real estate for the common ownership and enjoyment of the apartment unit owners, their guests and invitees. Further, that said common areas and facilities will include stairwells, sidewalks, parking areas, streets and ways, swimming pool, concrete deck and cabana, among others.

2. That in addition to the property declared to be condominium property, pursuant to the Declaration hereinabove referred, the Developer did also reserve in that said document the power and authority pursuant to the Kansas Apartment Ownership Act to add 1, 2 and/or 3 additional tracts of real property as condominium property by appropriate amendment to the Declaration pursuant to the expandable condominium law contained in the Kansas Apartment Ownership Act,



and do further reserve the right to construct on said expandable property additional condominium apartment units, limited common areas and facilities. That the Association hereby designates the Developer as its exclusive managing agent for the purpose of consuming and caring out those duties of the Association hereinafter set forth. That is the intention of the parties that the Developer will assume all the responsibilities of the Association, as those responsibilities are set forth in the Declaration of Condominium, the Articles and By Laws of the Association and the provisions of the Kansas Apartment Ownership Act, except where specific reservations and exceptions are noted herein.

3. That the term of this Management Agreement will begin as of the date of the filing and recording of the Declaration of Condominium in the Office of the Register of Deeds of Shawnee County, Kansas for the Pheasant Run Condominium Project, Buildings 1, 2, 3, 4, 5, 6, and 7, irrespective of the date hereinabove set out in which this document was actually signed by the parties hereto. Further, that the term of this Agreement and the rights and obligations of the parties hereto shall continue from and after that date of recording unless terminated by the default of the parties as hereinafter provided or until three (3) years from the date of the recording of the Declaration of Condominium, whichever event shall first occur. In no event will this Agreement in its present form continue for a period longer than three (3) years from the date of the filing of the Declaration of Condominium.

4. That the following is a list of the general duties and obligations which the Developer is assuming from the Association pursuant to the provisions of this Agreement, though the listing of the same is not meant to exclude others which are not herein listed:

(a) The Developer will have the responsibility of collecting the assessments levied against the apartment unit owners, together with any other moneys due the Association pursuant to the Declaration of Condominium, Articles of Incorporation and By Laws of the Association. Further, that the Developer will have the responsibility of causing the funds so collected to be deposited with the appropriate financial institution and will maintain full and accurate records of all assessments and other moneys collected from individual apartment units and the corresponding deposit of the same to the credit of the Association.

(b) That the Developer will be responsible for taking whatever action that is permitted pursuant to the Declaration of Condominium, the Articles and By Laws, and the laws of the State of Kansas to collect from any apartment unit owner or successor any unpaid assessments or other charges levied against said unit and, further, to provide, upon request, an accounting to any inquiring party of the status of an individual apartment unit's unpaid assessments or charges.

(c) That the Developer will maintain, for and in behalf of the Association, accounting records of all of its receipts and disbursements and the carrying out of its activities and responsibilities pursuant to this Agreement in accordance with good accounting practices. That such accounting records shall include, among other records, a record of all receipts and expenditures collected or disbursed on behalf of the Association and the apartment unit owners and shall maintain separate records for each apartment unit showing the date and the amount of payment of any assessment or other charges against said apartment unit and the date and amount of any payments made by the apartment unit and the balance remaining owed.



(d) That the Developer shall be permitted to employ such personnel as it shall from time to time deem necessary in order to facilitate and enable it to carry out its responsibilities hereunder.

(e) That the Developer will, in the event of any destruction to any part of the apartment units and/or the common areas and facilities as a result of casualty loss, be responsible for evaluating such loss with the assistance of an employed architectural service, all as provided in the Declaration of Condominium. Further, that in the event of any such loss, the Developer will be responsible for notifying and making such claims as are necessary upon appropriate insurance carriers for and on behalf of the Association and the apartment unit owners. Further, that the Developer will be responsible for determining whether the damaged apartment units are occupiable following a casualty and the approval of plans for reconstruction or repair, the obtaining of estimates and the cost of such rebuilding and repair and the ordering of the rebuilding and repair and the distribution of funds received from insurance, coverage or other sources for such reconstruction or repair.

(f) That the Developer will be responsible for the procurement of appropriate insurance as the same is provided for in the Declaration of Condominium, Articles and By Laws of the Association and the laws of the State of Kansas and shall be responsible for the payment of such insurance premiums and a review of the insurance coverage and appropriate endorsements on any such policies for the benefit of all parties to be protected therein. Further, that the Developer will be responsible for seeing to the appropriate disbursement of the insurance proceeds in accordance with the Declaration of Condominium, the Articles and By Laws of the Association, and the laws of the State of Kansas; but, in no event will the Developer be allowed to redirect or alter the manner in which insurance proceeds are to be paid, other than is provided in the above-mentioned documents.

(g) That the Developer will be responsible for maintaining and causing to be repaired all common areas and facilities during the term of this Agreement to the same extent as such is required of the Association pursuant to the Declaration of Condominium as recorded. Such duties will include such items as lawn mowing, snow removal, street repair, pool maintenance, etc.

(h) That the Developer will, in addition to those duties and responsibilities hereinabove stated, from time to time have such additional duties and responsibilities as shall be delegated to it by the Association. Provided, that in no event will any such delegated duties and responsibilities include any of those hereinafter reserved to the Association or any such duties or responsibilities considered non-delegable by the Declaration of Condominium, the Articles and By Laws of the Association and the laws of the State of Kansas, as the same are now in existence or may hereafter be altered or amended.

(i) Provided, that the Developer shall not be delegated any additional responsibilities or duties by the Association without the prior written consent of the Developer.

(j) That the Developer shall be responsible for the preparation of appropriate Rules and Regulations for the conduct of the affairs of the condominium project, including the responsibilities of the apartment unit owners and the Association in regard to the use of the facilities and other matters. Provided, further, that the application and validity of said Rules and Regulations, as promulgated by the Developer, will not become effective or binding upon any apartment unit owner until the same have first been approved by the Board of Directors of the Association.



5. That the following responsibilities and duties are expressly reserved and retained by the Association and are not to be considered as delegated to the Developer, pursuant to the terms of this Management Agreement:

(a) The promulgation and making of any amendments to the Declaration of Condominium, the Articles of Incorporation or By Laws. Provided, that the Developer shall have the right to consent to any such amendments to the Declaration that would in any way influence the Developer's responsibilities hereunder. Such prior written consent of the Developer to any such proposed amendments shall be filed and recorded in the Office of the Register of Deeds along with the amendments consented to. In the absence of any such precedent consent by the Developer, any such attempted amendments shall be null and void.

(b) The fixing of the amount of assessments and the determination of what items shall be included in the assessment charges from month to month shall be the responsibility of the Association. Provided, that the Developer will provide the Association with information relative to the reasonableness of any such charges collected in relationship to the actual expenditure history of the management of the condominium project by the Developer.

(c) The Association shall not lease, mortgage, or otherwise deal with any of the common areas and facilities of the condominium project without the prior written consent of the Developer and any such attempted mortgaging or leasing, without the prior consent of the Developer, will be null and void.

(d) That the Association will not further delegate, by contract or otherwise, any of its responsibilities other than by this Agreement with the Developer, or by subsequent amendments hereto, without the prior consent of the Developer.

6. That should either the Association or the Developer fail to perform any of the duties and obligations required of either of the parties hereto, or shall they otherwise breach this agreement by doing some unauthorized act without prior consent, then the offended parties shall, by written notice to the defaulting party, notify such defaulting party of the cause or event of default and shall further give said party a period of thirty (30) days in which to correct said default. In the event that such default is not cured within the thirty (30) day period following the written notice given by the offended party, then, and in that event, the offended party may, at its sole election, declare this contract null and void and proceed to other appropriate legal remedies, or, in the alternative, the offended party may pursue a legal action for breach of contract or specific performance against the defaulting party.

7. That the Developer shall be entitled to a management fee to be paid by the Association upon such terms and conditions as the parties may from time to time agree upon. That, in addition, the Developer may at any time during the term hereof assign all or any part of its rights or obligations hereunder to any other party without the prior consent of the Association.

8. All of the terms and conditions of this Agreement shall be binding upon each of the parties and their successors in interest until the Agreement is terminated as provided for herein. This binder shall apply to any successor to the Association, in the event the Association is dissolved or its existence is otherwise terminated and upon each of the apartment unit owners, in the event that they succeed to the operation of the common area facilities as a result of the dissolution of the Association, in whatever manner. All of the terms and obligations hereunder are binding upon each of the parties and their successors and assigns to the same full degree and extent as they are themselves hereby bound. The provisions of this Agreement shall be considered as covenants running with the land and shall



be binding upon successors in interest to the apartment units and the undivided interest in the common areas and facilities, as the same may hereafter be mortgaged, leased or conveyed.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures by their lawful representatives the day and year first above written.

ASSOCIATION:

PHEASANT RUN CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.

Benjamin F. Blair  
BENJAMIN F. BLAIR

Philip C. Morse  
PHILIP C. MORSE

Stanley R. Metzger  
STANLEY R. METZGER

DEVELOPER:

PHEASANT RUN COMPANY

PHIL MORSE HOMES, INC. - Partner

By Philip C. Morse  
PHILIP C. MORSE - President

Benjamin F. Blair  
BENJAMIN F. BLAIR

Stanley R. Metzger  
STANLEY R. METZGER

STATE OF KANSAS )  
COUNTY OF SHAWNEE )

SS:

BE IT REMEMBERED, that on this 14 day of May, 1979, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came BENJAMIN F. BLAIR, PHILIP C. MORSE and STANLEY R. METZGER, who are personally known to me to be the same persons who executed the within instrument of writing, and such persons duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, the day and year last above written.

Appointment Expires:

2-28-83

Pamela E. Ward  
NOTARY PUBLIC

Pamela E. Ward

Book 5 Page 193

Ex. H-5



STATE OF KANSAS )

COUNTY OF SHAWNEE )

SS:

BE IT REMEMBERED, that on this 14 day of May, 1979, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came PHILIP C. MORSE, President of Phil Morse Homes, Inc., a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Kansas, and PHILIP C. MORSE is personally known to me to be such officer and he is personally known to me to be the same person who executed, as such officer, the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.



My Appointment Expires:

2-28-85

*Pamela E. Ward*  
NOTARY PUBLIC

Pamela E. Ward

Book 5 Page 195

EX. H-6