



John B. Coffman

Acting Public Counsel

State of Missouri

Bob Holden

Governor

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March 12, 2002

Mr. Dale H. Roberts  
Secretary/Chief Regulatory Law Judge  
Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

**FILED**  
MAR 12 2002  
Missouri Public  
Service Commission

Re: Case NO. WC-2002-155 (Consolidated with SC-2002-160)

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **Notice of Filing of Exhibits From Local Public Hearing**. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

M. Ruth O'Neill  
Assistant Public Counsel

MRO:jb

cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED

MAR 12 2002

Missouri Public  
Service Commission

Office of the Public Counsel, )  
Complainant, )

v. )

Case No. WC-2002-155

Warren County Water and Sewer )  
Company and Gary L. Smith, )  
Respondents. )

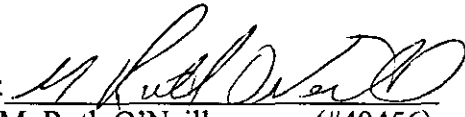
**NOTICE OF FILING OF EXHIBITS FROM LOCAL PUBLIC HEARING**

COMES NOW, the Office of the Public Counsel, and files with the Missouri Public Service Commission, the original and (2) copies of Public Counsel Exhibits 1 through 15 which were admitted into evidence at the local public hearing held in this case on March 11, 2002, at Incline Village, Foristell, Missouri. Contemporaneously with the filing of this notice and (3) sets of exhibits with the Commission, Public Counsel is also serving copies of these exhibits on all parties, and providing copies to the Commission. This filing is done pursuant to the direction of Regulatory Law Judge Bill Hopkins at the conclusion of the local public hearing.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By:

  
M. Ruth O'Neill (#49456)  
Assistant Public Counsel

P O Box 7800  
Jefferson City, MO 65102  
(573) 751-1304  
(573) 751-5562 FAX  
[roneill1@mail.state.mo.us](mailto:roneill1@mail.state.mo.us)

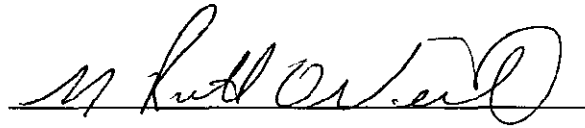
24

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 12<sup>th</sup> day of March 2002:

**GENERAL COUNSEL**  
Missouri Public Service Commission  
P O Box 360  
Jefferson City, MO 65102

**PAUL S DEFORD**  
Lathrop & Gage  
2345 Grand Boulevard Suite 2500  
Kansas City MO 64108-2684

A handwritten signature in cursive script, appearing to read "Paul S. Deford", is written over a horizontal line.



Public Counsel Exhibit #1

March 11, 2002

Foristell

WC-2002-155 (70)

2721 MASSAWU

INCLINE VILLAGE  
INTERSECTION OF PONDEROSA + FAIRWAY DR.

EXCAVATION WORK  
OSHA VIOLATIONS

SAFETY BARRIER  
NO ~~BAR~~



Public Counsel #2

INCLINE VILLAGE  
INTERSECTION OF PONDEROSA + FAIRWAY DR.

12 FT DEEP.

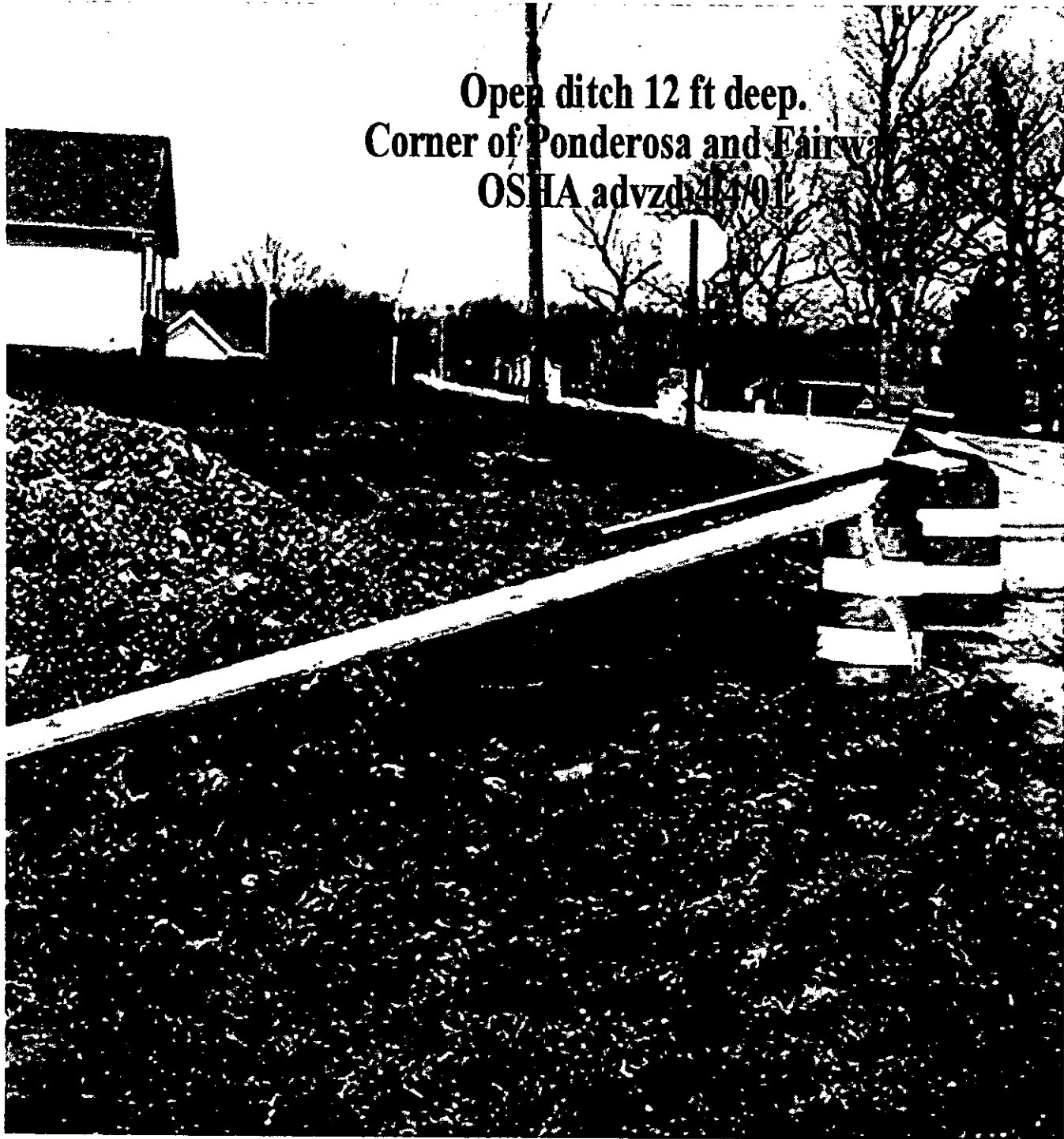
NO SHORING

INDIVIDUAL IN HOLE.



Public Counsel #3

Open ditch 12 ft deep.  
Corner of Ponderosa and Fairway  
OSHA advzd 4/4/01



Public Counsel #4





10' DEEP  
NO SHORING

Public Counsel #5



ANOTHER HOLE LEFT OPEN BY WCWS  
ABOUT 2 WEEKS



Public Counsel  
#6





30 DAY OLD REPAIR WORK NOT COMPLETED

27 12:00 PM

3 WEEKS WITHOUT FINISHING

Public Counsel #7





SALMON RESIDENCE  
2874 MAGNOLIA  
LOT 626  
463-4453

LIFT STATION  
OVER flowing  
Feb 2002

3 PREVIOUS CAUS TO WORKS  
TO REPAIRS

Public Counsel #8





Public Counsel #9





Public Counsel  
#10



Gary L. Smith, President

office (636) 463-1441  
fax (636) 463-1000  
mobile (314) 956-1361

**WARREN COUNTY WATER AND SEWER CO.**

1248 MIMOSA CT.  
P.O. Box 150  
FORISTELL, MO 63348

March 6, 2002

Dear Customer:

In 1991, when I decided to purchase what is now Warren County Water & Sewer Company, it was at the request of an individual who wanted to run this water to Forest Green Subdivision. The then existing well was condemned by MODNR and a source of safe drinking water was needed. The Trustees of Incline Village fought that expansion saying that they did not want "their water" going outside "their" subdivision. I was not only able to run water to Forest Green, I have since been able to provide service to Shady Oaks, Brandi Lynn and other customers in the surrounding area. Incline fought the addition of each new customer to this system.

In addition, over the last ten years, Incline has repeatedly fought for control of the Utility so that they could prevent further expansion and, possibly, be in a position to set rates and fees without MOPSC approval. This would allow them to set rates at a level whereby outside customers would pay the operating costs of Incline Village and potentially deny or discontinue service.

They are at it again. If you would like to express your position regarding the Trustees of Incline Village, and the effect they might have on your water/sewer service, you may want to attend a public hearing to be conducted by the MOPSC on Monday, March 11, 2002, at 6:00 p.m. The meeting will be held at the Incline Village Clubhouse. Everyone is invited to attend and express their opinion.

Although this Utility, at some point, will be sold to a larger utility, and, regardless of whom you may prefer to own and operate the utility, if you are concerned about the effect Incline Village would have on your service, you may want to attend this hearing.

If you can not attend, and would still like to express your opposition to this effort of Incline Trustees, you may send a letter to:

**Secretary, Missouri Public Service Commission**  
**PO Box 360**  
**Jefferson City, MO 65102-0360**  
Re: Case No. WC-2002-155

If you have any questions, please feel free to call. Otherwise, I encourage you to protect your interest and the future of your water and sewer service by attending this hearing or writing the MOPSC.

Thanks for your consideration.

Sincerely yours,

  
GARY L. SMITH

  
Public Counsel  
#11

Not printed or mailed at utility expense.

Gary L. Smith, President

office (636) 463-1441  
fax (636) 463-1000  
mobile (314) 956-1361

**WARREN COUNTY WATER AND SEWER CO.**

1248 MIMOSA CT.  
P.O. Box 150  
FORISTELL, MO 63348

March 6, 2002

Dear Customer:

Since 1991, when I purchased what is now Warren County Water & Sewer Company, the Trustees of Incline Village have spent thousands of your assessment dollars, and caused the spending of thousands of your utility dollars, on legal fees fighting for control of the Utility. From the standpoint of the Utility this has severely limited the amount of money that can spent for improvements to the utility.

While I will eventually sell this Utility to a larger utility, I do not intend to let the Trustees control the operation of the Utility. If you have built a home in the last few years, you know what it is like to deal with them, and the costs, fines, and other unnecessary expenses they can impose. If are concerned about how they have spent your money, you should be even more concerned if they are in a position to set utility rates and fees without MOPSC supervision.

They are at it again. If you would like to express your position regarding the Trustees of Incline Village, and the effect they might have on your water/sewer service, you may want to attend a public hearing to be conducted by the MOPSC on Monday, March 11, 2002, at 6:00 p.m. The meeting will be held at the Incline Village Clubhouse.

While this Utility will eventually be sold, and regardless of whom you may prefer to operate the utility, if you are concerned about the effect Incline Village would have on the cost and quality of your service, you may want to attend this hearing.

If you can not attend, and would still like to express your opposition to this effort of Incline Trustees, you may send a letter to:

**Secretary, Missouri Public Service Commission**

**PO Box 360**

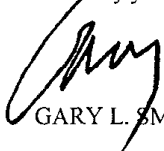
**Jefferson City, MO 65102-0360**

Re: Case No. WC-2002-155

If you have any questions, please feel free to call. Otherwise, I encourage you to protect your interest and the future of your water and sewer service by attending this hearing or writing the MOPSC.

Thanks for your consideration.

Sincerely yours,

  
GARY L. SMITH

*Public Counsel*  
#12

Not printed or mailed at utility expense.



Public  
Counsel #15

18 GREENBRIAR COURT FORISTELL, MO 63348-2406  
TELEPHONE: 636-463-1361 E-MAIL: [the-z-man@prodigy.net](mailto:the-z-man@prodigy.net)

Monday, March 11, 2002

Office of the Secretary  
MISSOURI PUBLIC SERVICE COMMISSION  
P.O. Box 360  
Jefferson City, MO 65102-0360

IN RE: Case Number WC-2002-155

Dear Sir or Madam:

I am no apologist for, or supporter of, the Warren County Sewer and Water Company. Nor am I predisposed to arbitrarily disapprove of a change in the ownership and management of that utility.

I am however, very much opposed to control and operation of the utility by any group or body that would not be subject to the oversight and regulatory functions of the Missouri Public Service Commission. I am specifically opposed to control and operation of this utility by the corporation registered with the Secretary of States Office and generally known as "The Trustees of Incline Village".

My reasons for opposing any attempt by this group to expand their sphere of influence and authority to include the water and sewer utility embrace, but are not limited to, the following:

- The make up of Boards of Trustees changes over time, at the will of the voting membership. We may have trustees this term who are dedicated to upgrading the utility; and after ensuing elections find ourselves represented by persons who have no interest in the operation of the utility at all.
- This, or a succeeding Board of Trustees, could arbitrarily find the need for three or four forty thousand-dollar per year employees to be recruited from the ranks of their political friends and allies. A very similar scenario was presented to the membership as recently as last year in the form of a "heads we win / tails you lose" annual budget proposal. The members present and voting rejected the proposals for creation of a position to be designated "Operations Manager" of this subdivision.
- This association has approximately eight hundred twenty two members who pay equal shares of the annual funding that constitutes our budget. To the best of my knowledge, over five hundred of those members have not been advised that we are contemplating the assumption of responsibilities for operation of a utility and their related costs.
- Some members of this Board of Trustees and a majority of the previous body of authority have adamantly opposed and done everything they could to impede efforts to extend the right to conveniently vote to all the members of this organization who contribute on an equal basis to its funding.
- As a property owners association, we are currently in greater debt than we've ever been before. The Articles of Indenture and Restrictions of this association would appear to prohibit that condition without ratification by the membership. There could (and probably will) be a great deal of additional expense involved with upgrading a utility to an unspecified but presumably much improved standard. Under the status quo as it relates to voting procedures, that ratification is probably not possible.
- Members of our Board of Trustees have demonstrated a willingness to knowingly disregard the laws of the State of Missouri in pursuit of their own objectives. Until I retained an attorney at my own expense in September of 2001, the Board of Trustees simply refused to honor their lawful obligation to make a list of voting members and their mailing addresses available for purposes of communication, thirty days before any meeting called for elections and voting. They had summarily refused to observe this statute for at least three years prior to my seeking legal assistance.
- Members of our Board of Trustees have knowingly held and condoned elections that were illegal and expressly in violation of the Articles of Indenture and Restrictions of Incline Village. Most recently, in September of 2001, our Trustees claim to have amended the Articles of Indenture and Restrictions with a vote totaling one hundred seventy members (divided pro and con). The amended Articles of Indenture and Restrictions explicitly require the presence of a quorum and a two-thirds majority voting in the affirmative, to take this action. In spite of having been informed of this requirement, our trustees simply chose to ignore it and declare the election to be valid.

Office of the Secretary  
MISSOURI PUBLIC SERVICE COMMISSION  
P.O. Box 360  
Jefferson City, MO 65102-0360

IN RE: Case Number WC-2002-155 (continued)

The Board of Trustees of Incline Village is not an inclusive representative body; and has demonstrated no predilection to assume that posture.

After being repeatedly rebuffed in attempts to enlist the support of successive Boards of Trustees for a voting format that gave a meaningful voice to the approximately sixty two percent of our assessment paying membership that does not reside at Incline Village and does not find it convenient to travel to the location of our annual meeting to cast their votes, I have initiated and distributed the attached voting rights petition at my own expense. The petition is in the mails today; and its outcome is still unknown.

Additionally, I have instructed an attorney, Lee R. Elliott, to petition the Twelfth Circuit Court to have any sanctioned elections conducted in violation of our recorded quorum and approval requirements, set aside. After cursory inspection of the applicable documents, Mr. Elliott raises some additional questions regarding the legitimacy of the corporation registered as "The Trustees of Incline Village", itself. It would appear that there was a prior corporation, which may retain legal claim to the right of representation. That matter is still under investigation.

Until all the providers of funding for this organization have an equal voice and the right of democratic inclusion, I am personally opposed to expansion of the authority, duties and responsibilities of the Board of Trustees of Incline Village.

I would like to thank the MISSOURI PUBLIC SERVICE COMMISSION for allowing me to enumerate, and giving its due consideration to, my concerns. If the Commission is empowered to force the sale of the utility, let it be to an entity that has the expertise required to operate it; and is answerable to the oversight and rate setting authority of the MISSOURI PUBLIC SERVICE COMMISSION.

Respectfully Yours

A handwritten signature in black ink, appearing to read "Frank R. Ziener", with a stylized flourish at the end.

Frank R. Ziener

# WE'RE INCLINED TO THINK...

P.O. BOX 105  
FORISTELL, MO 63348

Thursday, February 21, 2002

Dear Incline Village Property Owner:

Here is a four part true or false quiz for your amusement and/or information. The only correct answers are the ones you choose.

1. If I had been at the Incline Village annual meeting in Sept. of 2001, I would have voted in favor of the budget proposal increasing my annual assessments 30% to allow our trustees to create a \$40,000.00 per year position for one of themselves, to be designated as "Operations Manager of Incline Village".  
☐ TRUE  
☐ FALSE
2. If I had been at the Incline Village annual meeting in Sept. of 2001, I would have voted in favor of the budget proposal that provided for the elimination of road maintenance, grounds care and activities to allow our trustees to create a \$40,000.00 per year position for one of themselves, to be designated as "Operations Manager of Incline Village".  
☐ TRUE  
☐ FALSE
3. If I had been at the Incline Village annual meeting in Sept. of 2001, I would have voted in favor of the amendment to realign the term lengths of some trustees and eliminate intervals where a majority (four out of seven) of the incumbents might run for re-election on their respective records in the same year.  
☐ TRUE  
☐ FALSE
4. I really don't care what happens to my money after I mail my assessment payment in. If our trustees found it necessary at some point to spend more money than they had, I don't see any reason for them to have advised the lot owners before they assumed a bank loan obligation that may now be close to one half million dollars.  
☐ TRUE  
☐ FALSE

Approximately 822 lots were in good standing and eligible to cast one vote apiece at the Sept. 2001 annual meeting. The owners of about 170 lots were actually in attendance at the meeting; and their votes decided questions 1-3. The budget proposals were both defeated by the narrowest of margins. The change in trustee terms was adopted in violation of the quorum requirements of the Articles of Indenture of Incline Village.

If you are the owner of one or more of the 652 properties that dutifully submitted your assessment payment; but were denied the right to vote because were unable to be present at the annual meeting ... have I got a deal for you!

If a majority (that's about 412) of us sign a petition to that effect, we'll vote by mail next year, and every year thereafter. No ands, ifs, or buts. The Articles of Indenture of Incline Village specifically provide for change by petition signed and submitted by a majority of the members in good standing. We can change the voting rules.

That petition along with a pre-addressed envelope is enclosed. The rest is up to you.

It makes good sense to me



Frank Ziener

Property Owner / Lots 29 & 30

<http://pages.prodigy.net/the-z-man>

a running total of how we're doing will be displayed on this web-site



***Missouri Revised Statutes***  
**Chapter 355**  
**Not-For-Profit Corporation Law**  
**Section 355.266**

August 28, 2001

**Action by written ballot.**

355.266.

1. Unless prohibited or limited by the articles or bylaws, any action which may be taken at any annual, regular or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.
2. A written ballot shall set forth each proposed action and shall provide an opportunity to vote for or against each proposed action.
3. Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
4. All solicitations for votes by written ballot shall:
  - (1) Indicate the number of responses needed to meet the quorum requirements;
  - (2) State the percentage of approvals necessary to approve each matter other than election of directors; and
  - (3) Specify the time by which a ballot must be received by the corporation in order to be counted.
5. Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

(L. 1994 H.B. 1095)

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Effective 7-1-95

## PETITION TO AMEND THE ARTICLE OF INDENTURE AND RESTRICTIONS OF INCLINE VILLAGE

### EXCERPTED PARAGRAPH FROM CURRENT ARTICLE VIII

This Indenture and Restriction may be amended, modified or changed by written petition, signed by fifty one percent (51%) of the lot owners of INCLINE VILLAGE or by vote otherwise necessary to conduct business at a meeting duly held in accordance with the provisions of Article I Section 1.06 herein.

### PROPOSED REPLACEMENT FOR EXCERPTED PARAGRAPH FROM ARTICLE VIII

This Indenture and Restriction may be amended, modified or changed by written petition, signed by a majority (fifty percent plus one vote) of the lot owners of INCLINE VILLAGE or by vote duly conducted in accordance with the provisions of the Article I Section 1.06 herein

### CURRENT ARTICLE I SECTION 1.06

The majority (51%) of all lot owners shall constitute a quorum for any meeting; except that any lot owner who is in violation of any restrictions herein contained shall not be considered a lot owner for the purpose of determining a quorum, nor shall any such lot owner be entitled to vote until such assessment or violation is corrected to the satisfaction of the Trustees. Any action, excluding amendment, modification or change to this Indenture and Restrictions, may be made at any meeting at which a quorum is not present upon the affirmative vote of a simple majority fifty-one (51 %) percent of the lot owners present and qualified to vote. If however, a quorum is present, any action, including amendment, modification or change to this Indenture and Restrictions may be taken at any meeting upon an affirmative vote of two-thirds (2/3) of the lot owners present and qualified to vote. Provided however, that no amendment, modification, or change to this Indenture and Restrictions accomplished at such a meeting, shall be effective unless the amendment, modification, or change is set out in the notice required by Article I, Section 1.05 herein.

### PROPOSED REPLACEMENT FOR ARTICLE I SECTION 1.06

The majority (fifty percent plus one vote) of all lot owners shall constitute a quorum for any election or issue requiring ratification; except that any lot owner who is in violation of any restrictions herein contained shall not be considered a lot owner for the purpose of determining a quorum, nor shall any such lot owner be entitled to vote until such assessment or violation is corrected to the satisfaction of the Trustees. A notice of election and/or ratification shall be mailed to all lot owners as provided in Section 1.05. The notice of election shall be accompanied by a mail in ballot to be executed and returned by the lot owner within a specified time period. The specified time period shall not be less than thirty (30) nor more the forty five (45) days after the notice of election and/or ratification is deposited in the US Mail, first class, postage prepaid. If the total number of ballots submitted does not constitute a quorum, any action excluding amendment, modification or change to this Indenture and Restrictions, may be made upon receipt of the affirmative votes of a simple majority (fifty percent plus one vote) of all the votes cast. If however, the total number of votes cast within the specified time period constitutes a quorum, any action including amendment, modification or change to this Indenture and Restriction may be taken upon the affirmative votes of a majority (fifty percent plus one vote) of all the votes cast. Provided however, that no election, ratification, amendment, modification, or change to this Indenture and Restrictions, except by petition as provided in Article VIII, shall be effective unless the election, ratification, amendment, modification, or change is set out in the notice required by Article I, Section 1.05 herein.

### WHAT THE PROPOSED AMENDMENTS TO ARTICLE VIII and ARTICLE I SECTION 1.06 WILL DO:

Define a quorum as a simple majority ... presently a quorum is defined as a full one percent more than one half of all votes  
Provide the right to vote by mail ... presently the right to vote is forfeited by inability to be present at a meeting called for voting  
Allow amendment to the Indenture and Restriction by a simple majority of a quorum ... presently a super majority is required  
Maintain the prohibition of amendment or change to the Indenture and Restriction by fewer than a quorum ... unchanged  
Maintain the right of a simple majority of the eligible membership to amend the Articles of Indenture by petition ... unchanged

I / We the owner(s) of lot(s) \_\_\_\_\_ in Incline Village and members in good standing of the property owner's organization are in favor of the universal right to vote by absentee or mail in ballot as described in Missouri Statute 355-266, in lieu of the present requirement of attendance at an annual or special meeting.

I / We hereby petition the Trustees of Incline Village to amend Article 1 Section 1.06 and Article VIII of the Indenture of Trust and Restrictions as set forth above under the headings "PROPOSED REPLACEMENT FOR ARTICLE I SECTION 1.06" and "PROPOSED REPLACEMENT FOR EXCERPTED PARAGRAPH FROM ARTICLE VIII".

Name (please type or print) \_\_\_\_\_

Signature(s) \_\_\_\_\_

Mailing Address \_\_\_\_\_

Please mail the completed petition to:

We're Inclined To Think PO Box 105 Foristell, MO 63348