

H.O.A.
COPY

16055 Space Center Blvd.
Suite 150
Houston, Texas 77062
281.480.1211 tel.
281.480.1210 fax



July 19, 2005

Ms. Mary Ann Daigle
County Clerk
P.O. Box 2450
Galveston, Texas 77553-2450

RE: Bay Colony Subdivision

Dear Ms. Daigle:

Enclosed herewith is the Joint Use and Easement Agreement for Bay Colony subdivision. Please record this document in the Real Property Records of the County, and return the original, recorded instrument to me in the self-addressed stamped envelope provided for your convenience.

Enclosed is a check in the amount of \$38.00 to cover your costs in this matter.

Thank you for your attention to this matter.

Yours truly,

Shari Rogers
Shari Rogers
Legal Assistant to
Dick H. Gregg, III

Enclosures

cc: Bay Colony

JOINT USE AND EASEMENT AGREEMENT

THE STATE OF TEXAS

COUNTY OF GALVESTON

THIS JOINT USE AND EASEMENT ("Agreement") is entered into by and among the following property associations, all of which are Texas non-profit corporations, and all located within the Bay Colony subdivision:

1. Bay Colony Northpointe Homeowners Association, Inc. (hereinafter sometimes "Northpointe"),
 2. The Meadows in Bay Colony Homeowners Association, Inc. (hereinafter sometimes "Meadows"),
 3. The Lakes in Bay Colony Homeowners Association, Inc. (hereinafter sometimes "Lakes"),
 4. Bay Colony Pointe Homeowners Association, Inc. (hereinafter sometimes "Pointe"),
 5. The Enclave at Bay Colony Owners Association, Inc. (hereinafter sometimes "Enclave"), and
 6. The Retreat in Bay Colony Homeowners' Association, Inc. (hereinafter sometimes "Retreat");
- Hereinafter, collectively these six associations may be referred to as the "Bay Colony Associations" or "BCA" and members of all of these six (6) associations may collectively be referred to as "BCA Members".

In consideration of the following premises, conditions and mutual promises and agreements, the parties do hereby agree as follows:

WHEREAS, Northpointe is the owner of the real property described on Exhibit "A" attached hereto and made a part hereof ("Property") which is designated as "Common Area" as defined in the Declaration of Covenants, Conditions and Restrictions of Bay Colony Northpointe, Section One, filed under Film Code No. 2005015589 and recorded in the Official Public Records of Real Property of Galveston County, Texas as amended and any additional sections of Bay Colony Northpointe ("Northpointe Declarations"); and

WHEREAS, there have heretofore been constructed and placed, and may hereafter be constructed and placed, on the Property certain recreational facilities including a swimming pool, parking, children's play area, bath house, grounds and landscaping, canopies and pool furniture (which facilities and any recreational improvements, replacements and/or additions thereto are hereinafter collectively called "Facilities"); and

WHEREAS, Meadows is the homeowners association for the owners of the property in The Meadows in Bay Colony Subdivision, a subdivision in Galveston County, Texas, including such property as has been annexed into The Meadows in Bay Colony Homeowners Association, Inc. by instruments recorded in the Office of the County Clerk of Galveston County, Texas, as provided in and permitted by declaration therefor recorded under Clerk's File No. in the Office of the County Clerk of Galveston County, Texas, and amendments thereto ("Meadow Declarations"); and

WHEREAS, Lakes is the homeowners association for the owners of the property in The Lakes in Bay Colony Subdivision, a subdivision in Galveston County, Texas, including such property as has been annexed into The Lakes in Bay Colony Homeowners Association, Inc. by instruments recorded in the Office of the County Clerk of Galveston County, Texas, as provided in and permitted by declaration therefor recorded under Clerk's File No. in the Office of the County Clerk of Galveston County, Texas, and amendments thereto ("Lakes Declarations"); and

WHEREAS, Pointe is the homeowners association for the owners of the property in Bay Colony Pointe Subdivision, a subdivision in Galveston County, Texas, including such property as has been annexed into Bay Colony Pointe Homeowners Association, Inc. by instruments recorded in the Office of the County Clerk of Galveston County, Texas, as provided in and permitted by declaration therefor recorded under Clerk's File No. in the Office of the County Clerk of Galveston County, Texas, and amendments thereto ("Pointe Declarations"); and

WHEREAS, Enclave is the homeowners association for the owners of the property in The Enclave at Bay Colony Subdivision, a subdivision in Galveston County, Texas, including such property as has been annexed into The Enclave at Bay Colony Owner Association, Inc. by instruments recorded in the Office of the County Clerk of Galveston County, Texas, as provided in and permitted by declaration therefor recorded under Clerk's File No. in the Office of the County Clerk of Galveston County, Texas, and amendments thereto ("Enclave Declarations"); and

WHEREAS, Retreat is the homeowners association for the owners of the property in The Retreat at Bay Colony Subdivision, a subdivision in Galveston County, Texas, including such property as has been annexed into The Retreat at Bay Colony Homeowners' Association, Inc. by instruments recorded in the Office of the County Clerk of Galveston County, Texas, if any, as provided in and permitted by declaration therefor recorded under Clerk's File No. in the Office of the County Clerk of Galveston County, Texas, and amendments thereto ("Retreat Declarations"); and

WHEREAS, Northpointe is the homeowners' association for the owners of the property in Bay Colony Northpointe Subdivision a Subdivision in Galveston County, Texas, including such property which in the future, may be annexed into the Northpointe subdivision by the filing of an instrument to such effect in the Office of the County Clerk of Galveston County, Texas as provided in and permitted by the Northpointe Declarations; and

WHEREAS, Northpointe desires for the persons who are Bay Colony Association Members (BCA Members") as contained in the Northpointe Declarations, Meadows Declarations, Lakes Declarations, Pointe Declarations, Enclave Declarations and Retreat Declarations, provided that the BCA Members shall be limited to the lots platted and annexed into the six Bay Colony Associations that are parties to this agreement, the right to enter upon the Property, and use and enjoy the Facilities, and in consideration thereof, Meadows, Lakes, Pointe, Enclave and Retreat has agreed to pay certain sums of money to Northpointe as set forth herein below; and

WHEREAS, Northpointe desires to grant to the BCA Members the right for the BCA Members and all BCA Members' families, tenants, invitees, guests and those purchasing houses from BCA Members ("Related Users") as provided herein to enter upon the Property and use and enjoy the Facilities, subject to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the premises and the consideration hereafter set forth, the parties hereto agree as follows:

1. Grant of Rights: Northpointe hereby grants, sells and conveys unto Meadows, Lakes, Pointe, Enclave and Retreat and its successors and assigns, the right, privilege and easement for BCA Members and "Related Users" (hereinafter defined) to enter upon the Property and use and enjoy the Facilities pursuant to the terms hereof from and after the date of recordation of this instrument in the real property records of Galveston County, Texas ("Use Commencement Date") It is understood that such grant, sale and conveyance shall permit all BCA Members and Related Users (such BCA

Members and Related Users being hereinafter collectively referred to as "Facility Users") to enter upon the Property and use and enjoy the Facilities from and after the Use Commencement Date, subject to the terms of this Agreement.

2. Easement: The easement, rights and privileges herein granted shall be irrevocable (except as conditions and easements affecting the Property and to all rules and regulations promulgated from otherwise provided herein), shall run with the land, and shall be subject to all restrictions, covenants, Associations ("Rules and Regulations") and to the right of Northpointe to exclude Facility Users from use of the Facilities in the event the payment obligations provided for herein for Bay Colony Associations are not satisfied as herein provided. Northpointe also reserves the right to exclude from entry on the Property and use of the Facilities any Facility User who fails to abide by the Rules and Regulations. Northpointe hereby binds itself, its successors and assigns, to warrant and forever defend the above described easement, rights and privileges unto Meadows, Lakes, Pointe, Enclave and Retreat, and its successors and assigns, and each and every Facility user, against every person whomsoever lawfully claiming or to claim the same or any part thereof, subject to the rights and reservations contained herein in favor of Northpointe, and to the covenants and obligations contained herein binding Meadows, Lakes, Pointe, Enclave and Retreat.

3. Binding Effect: This instrument shall be binding upon the successors and assigns of the parties hereto. It is further intended by the parties hereto that the easement, rights and privileges granted herein shall be appurtenant to and burden the Property.

4. Usage Fees and Budget: In consideration of the easements, rights and privileges, in favor of Meadows, Lakes, Pointe, Enclave and Retreat contained in this Agreement, Meadows, Lakes, Pointe, Enclave and Retreat shall make payments to Northpointe as provided in this Agreement. "Usage Fees" (hereinafter defined) shall represent Meadows, Lakes, Pointe, Enclave and Retreat's pro rata portion of such expenses of operating and maintaining the Property and Facilities as are shown on an annual budget heretofore approved by the Board of Directors of Northpointe as provided in this Agreement. ("Approved Budget") (such permitted costs described in Section 5 of this Agreement as shown in such Approved Budget are herein referred to as the ("Allowable Costs").

B. Each year during the term hereof, designated representatives of the Northpointe, Meadows, Lakes, Pointe, Enclave and Retreat Boards of Directors shall meet to discuss the following year's budget for the property and facilities. Based on such meeting, Northpointe shall prepare a proposed budget for the maintenance and operation of the Property and Facilities for the next succeeding calendar year ("Proposed Budget"), and shall, on or before August 15 of that year provide a copy of same to the President of Meadows, Lakes, Pointe, Enclave and Retreat or the person designated by each association in writing to Northpointe. The Boards of Directors of Meadows, Lakes, Pointe, Enclave and Retreat ("MLPER Boards" collectively) shall review such proposed budget and any association may request such reasonable additional information from Northpointe pertinent to its review, and Northpointe shall promptly provide same to the requesting board through the requesting association's Secretary. The MLPER Boards shall submit its comments not later than September 15 of that year to Northpointe through the President of Northpointe or the person designated by Northpointe Board of Directors in writing to MLPER Boards, and after MLPER Boards' comments are considered, Northpointe shall respond in writing to such comments and adopt a budget by October 15 for the next succeeding calendar year ("Approved Budget"). Northpointe shall provide an itemized breakdown of all actual and anticipated expenditures at the time of submitting its annual Proposed Budget to MLPER Boards.

c. The Usage Fees are to be paid by Bay Colony Associations semi-annually as billed by Northpointe, and shall be calculated by Northpointe on a semi-annual basis as expenses constituting a portion of the Allowable Costs are incurred, with the following pro rata share being calculated by multiplying the amount of Allowable Costs incurred for such semi-annual period by the respective factor below for each association ("Formula"). Such percentage is calculated based upon the number of lots/units for each respective association and this percentage shall not change even if additional properties are annexed or existing lands are replatted to change the number of lots. Northpointe shall be responsible for all costs and expenses in connection with the Facilities and Property in excess of the respective percentage of Allowable Costs.

Percentages for each association:

Northpointe	13.06%
Meadows	16.08%
Lakes	18.89%
Pointe	36.32%
Enclave	3.67%
Retreat	11.98%

It is agreed that the usage fees of the Facilities and Property during any portion of the year 2005, prior to the use commencement date, shall be calculated by use of the formula stated above and shall be due and payable within 30 days from the receipt of an invoice for such period of time. It is agreed that the Usage Fees for use of the Facilities and property during any portion of the year 2005 following the Use Commencement Date shall be calculated by use of the Formula stated above based upon the amount of costs which would be "Allowable Costs" if same were part of an Approved Budget for 2005 as determined by Northpointe, and supported by invoices and other documentation pertaining to same. Usage Fees chargeable to MLPER Boards as provided in this Agreement shall be payable to Northpointe within thirty (30) days of the date mailed. MLPER Boards shall not be required to remit usage fees more frequently than semi-annually.

D. Northpointe will use best efforts to cause the invoices it receives which include services rendered or items supplied to Northpointe in addition to those directly related to the Property or Facilities (for illustration purposes, for example, any electric bill which covers electricity consumed at the swimming pool as part of the Facilities as well as in connection with the irrigation systems or other amenities which are not part of the Facilities) to be sufficiently detailed to identify the portion of such bills which relate directly to the Facilities. If Northpointe cannot with certainty apportion any expense or bill, the parties hereto, in light of the impossibility of determining the exact portion of the certain expenses, including but not limited to accounting fees and management fees, incurred by Northpointe that relate to the Facilities (and therefore to be included in Allowable Costs), hereby stipulate that same shall be determined by Northpointe using its best efforts and its decision shall be final.

E. On or before August 15 of each year of this agreement, beginning with the calendar year 2006, all of the Bay Colony Associations shall submit to all other Bay Colony Associations a copy of its financial statements for the immediate preceding budget year, as prepared by an independent certified public accountant and the association requested to give the information shall deliver a copy of the financial statements.

5. Allowable Costs:

A. The parties agree that the "Allowable Costs" shall be comprised of the following:

- (i) General maintenance, replacement, modifications and operating expenses of the improvements and personal property constituting the Facilities, and of the Property, including but not limited to playground equipment, lifeguards, chemicals and landscaping expenses. "Replacement" as used above shall exclude those items specified in Exhibit "B" hereto.

- (ii) Pest control expenses relating directly to the Facilities.

- (iii) Legal, management and accounting expenses relating directly to the Facilities.

- (iv) Utility, telephone and trash collection expenses relating directly to the Facilities.

- (v) Ad valorem tax expenses relating to the Property and/or Facilities, provided that Northpointe agrees to use good faith efforts to obtain exemptions from such taxes.

- (vi) Insurance expenses relating directly to the Property and Facilities and the operation thereof.

- (vii) Pool tag or other identification expenses relating to use controls implemented for the Facilities.

- (viii) Billing and collection expenses reasonably related to fees chargeable to Bay Colony Associations hereunder.

B. The parties agree that the Allowable Costs shall exclude the following

- (i) Fees paid by Northpointe for billing and collecting assessments, excluding assessments chargeable under Section 5. A. (viii) above.

- (ii) Office supply expenses of Northpointe.

- (iii) Fees paid for accounting management services of Northpointe, not reasonably related to the Facilities.

- (iv) Fees relating to the street lights, if any, paid by Northpointe.
- (v) Expenses of capital improvements and reserves.

6. Capital Improvements and Reserves:

A. Except as otherwise provided in this Section 6, MLPER Boards shall not be required to provide funds for any addition to the facilities and improvements which are situated on or used in connection with the Property as of the date of execution of this Agreement ("Existing Facilities"). It is expressly provided, however, that any or all MLPER Boards may, by separate written agreement approved in writing by any or all of the MLPER Boards in its discretion, agree with Northpointe from time to time to provide funds for agreed additions to the Existing Facilities deemed appropriate by any or all of the MLPER Boards in such amounts and under such terms and conditions as any or all of the MLPER Boards and Northpointe may jointly agree. Funds so agreed to be contributed by any or all of the Bay Colony Associations are herein referred to as "Agreed Capital Contributions", and shall be payable as agreed between any or all of the Bay Colony Associations as evidenced in

writing as described above, but otherwise subject to this Agreement.

B. (i) The parties agree that the items included within the Facilities existing as of the date of this agreement which are agreed to require reserves for replacement costs ("Reserve Items") as well as the agreed upon replacement cost and replacement schedule therefor for reserve purposes under this Agreement, are shown on Exhibit "B" attached hereto and made a part hereof. Bay Colony Associations shall each make a reserve deposit by April 15 of each year, beginning in 2006 in an Amount representing their respective pro rata share (using the formula contained in Section 4. C. hereof) of the portion of the replacement schedule of the annual reserve amount for the immediate years used life of the agreed upon items requiring reserves shown on said Exhibit "B" for such year for each Reserve Item. By April 15, 2012, the parties hereto shall agree upon a revised Exhibit "B", which shall be attached hereto and supersede the existing Exhibit "B". In the event the parties hereto fail to agree upon a new Exhibit "B", a reserve study shall be commissioned by the parties hereto. An independent expert agreed upon by all parties hereto shall perform the reserve study which will provide the basis for the new Exhibit "B". The cost for the reserve study shall be shared pro-rata (according to the percentages in Section 4 C. hereof) by the parties hereto. Thereafter, at every five (5) year anniversary, a new Exhibit "B" shall be formulated in accordance with the foregoing procedure.

(ii) Any agreed addition to the Facilities after the date hereof shall require, in addition to the requirements of Section 6. A. above, that the parties hereto also agree upon the need for reserves for each such agreed addition, and, if the need for reserves is agreed upon, then such parties shall also agree upon replacement reserve schedule and amount as to each item of Facilities affected by such agreed addition, and shall evidence such agreement by an amended Exhibit "B" to this Agreement, which shall be executed by an authorized representative of each party hereto but shall not be required to be attached to this Agreement in the real property records. In the event the parties hereto cannot agree upon such replacement reserve schedule and amount, an independent study shall be commissioned by the parties hereto as stated hereinabove.

(iii) All reserve funds shall be deposited in a separate account of Northpointe maintained by Northpointe at a federally insured financial institution solely and exclusively for reserve funds hereunder. No amounts from such account shall be permitted to be used for any purpose other than replacement of Facilities as described in Exhibit "B" attached hereto, unless agreed in writing by all parties hereto.

7. Reimbursement Fee: Bay Colony Associations respectively shall be responsible for, and shall, within thirty (30) days of request by Northpointe therefor, reimburse Northpointe for, all costs and expenses of Northpointe arising directly out of any injury to any person on the Property or any damage to the Property or Facilities, which injury or damage is caused by any negligence of a Facility User, or by the failure of any such Facility User to comply with the Rules and Regulations ("Reimbursement Fee").

8. Remedies: It is agreed that in the event any Bay Colony Association fails to pay any Usage Fee or any Reimbursement Fee, or any of its portion of any Agreed Capital Contribution, within thirty (30) days after the due date thereof Northpointe may exclude all Facility Users from using any and all of the Facilities until such fees are paid in full, but that upon the payment of the Usage Fee, Reimbursement Fee, or Agreed Capital Contribution, the Facility Users shall again be permitted to use the Facilities under the terms of this Agreement. In addition, it is agreed that in the event of default by any party under this Agreement which continues for thirty (30) days after the date of

written notice thereof from any non-defaulting party, any non-defaulting party may enforce this Agreement by specific performance or pursue a judgment for damages against any defaulting party, seek other relief at law or in equity or proceed with any combination of the above remedies which are cumulative.

9. Rules and Regulations: Bay Colony Associations acknowledge and agree on behalf of the Facility Users that the usage of the Facilities shall be subject to the Rules and Regulations promulgated by Northpointe pursuant to the Bylaws and Declarations governing Northpointe, provided such rules are uniform and apply to all persons using the Facilities.

10. Nature of Grant: It is understood and agreed by the parties hereto that the grant of the easement, rights and privileges herein by Northpointe is perpetual subject to the terms hereof.

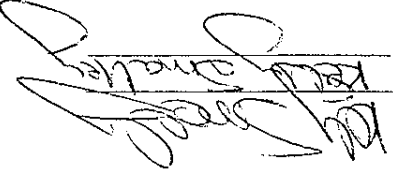
11. Entire Agreement: This instrument constitutes the entire agreement of the parties hereto and any representation or statement, written or oral, previously made and not incorporated herein shall be of no force or effect and is not binding on the parties hereto. Should any provision of this instrument be adjudged invalid, illegal or unenforceable, then such provision shall be excluded herefrom and this instrument construed as though such provision were not a part thereof.

12. Venue and Remedies: This instrument shall be construed in accordance with the laws of Texas. Further, any prevailing party in any action to enforce the terms and provisions of this instrument shall be entitled to recover reasonable attorney's fees and costs of court. This agreement may be amended only by written agreement of all the parties hereto.

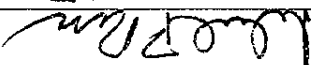
13. Amendment: No Bay Colony Associations shall withdraw from this agreement without the prior written consent of all Bay Colony Associations hereto. Further, this agreement shall not be modified, amended or terminated except by written instrument executed by all parties hereto and recorded in the Official Public Records of Real Property of Galveston County, Texas.

14. Assignment: The rights of any party hereto may not be assigned without the prior written consent of the each and every party hereto.

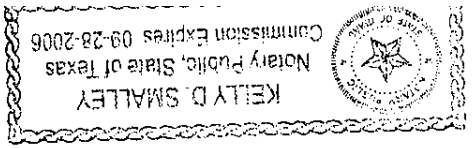
EXECUTED on the 17th day of June, 2005.

Attest: 
Name: Kelly Bradley

Bay Colony Northpointe Homeowners Association, Inc.

By: 
Name: ROBERT P. RAM

The Meadows in Bay Colony Homeowners Association, Inc.



[Handwritten signature]

This instrument was acknowledged before me on this the 17th day of June, 2005, by Michael Ross, Member of Bay Colony Northpointe Homeowners Association, Inc., a Texas non-profit corporation, by and behalf of the said corporation.

THE STATE OF TEXAS
COUNTY OF GALVESTON
Harris

By: *[Signature]*
Name: Michael R. Ross

Attest: *[Signature]*
Name: Michael R. Ross

The Retreat in Bay Colony Homeowners' Association, Inc.

By: *[Signature]*
Name: Michael Schaffer

Attest: *[Signature]*
Name: Michael R. Ross

The Enclave at Bay Colony Owners Association, Inc.

By: *[Signature]*
Name: Michael Schaffer

Attest: *[Signature]*
Name: Michael R. Ross

Bay Colony Pointe Homeowners Association, Inc.

By: *[Signature]*
Name: Michael Schaffer

Attest: *[Signature]*
Name: Michael R. Ross

The Lakes in Bay Colony Homeowners Association, Inc.

By: *[Signature]*
Name: Michael Schaffer

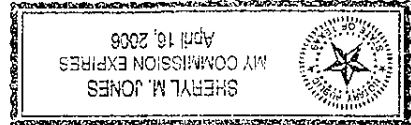
Attest: *[Signature]*
Name: Michael R. Ross

Notary Public in and for the State of Texas

THE STATE OF TEXAS

COUNTY OF GALVESTON

This instrument was acknowledged before me on this the 20th day of June, 2005, by Sheryl M. Jones of The Meadows in Bay Colony Homeowners Association, Inc., a Texas non-profit corporation, by and behalf of the said corporation.

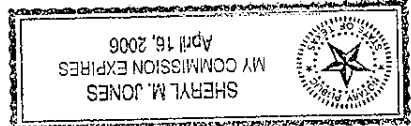


Notary Public in and for the State of Texas

THE STATE OF TEXAS

COUNTY OF GALVESTON

This instrument was acknowledged before me on this the 20th day of June, 2005, by Sheryl M. Jones of The Lakes in Bay Colony Homeowners Association, Inc., a Texas non-profit corporation, by and behalf of the said corporation.

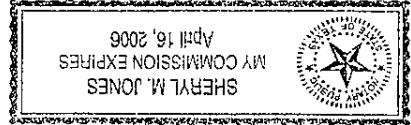


Notary Public in and for the State of Texas

THE STATE OF TEXAS

COUNTY OF GALVESTON

This instrument was acknowledged before me on this the 20th day of June, 2005, by Sheryl M. Jones of Bay Colony Pointe Homeowners Association, Inc., a Texas non-profit corporation, by and behalf of the said corporation.

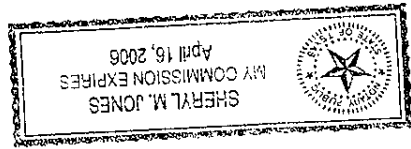


Notary Public in and for the State of Texas

THE STATE OF TEXAS

COUNTY OF GALVESTON

This instrument was acknowledged before me on this the 20th day of June, 2005, by Sheryl M. Jones of The Enclave at Bay Colony Owners Association, Inc., a Texas non-profit corporation, by and behalf of the said corporation.



Sheryl M. Jones

Notary Public in and for the State of Texas

THE STATE OF TEXAS
COUNTY OF GALVESTON
Harris

This instrument was acknowledged before me on this the 17th day of June, 2005, by Michelle Ross, Resident of The Retreat in Bay Colony Homeowners' Association, Inc., a Texas non-profit corporation, by and behalf of the said corporation.

Kelly D. Smalley
Notary Public in and for the State of Texas

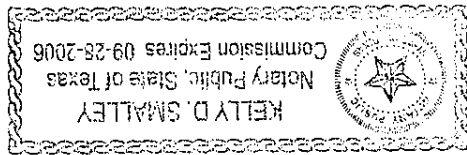


EXHIBIT "A"

Restricted Reserve "B" of the 646 Commercial Plat Recorded in Plat Record 2005A Map Number 12, Galveston County Map Records.

F. RETREAT
1. Annual Set Aside To Be Placed In Reserve On April 15 Each Year Beginning 2006:
\$ 7419.00 x 3.67% = \$ 272.28

1. Annual Set Aside To Be Placed In Reserve On April 15 Each Year Beginning 2006:
\$ 7419.00 x 11.98% = \$ 888.00