

BYLAWS

OF

MOSS CREEK VILLAGE HOMEOWNERS' ASSOCIATION, INC.

AN INDIANA NOT-FOR-PROFIT CORPORATION

ARTICLE ONE

Identification and Applicability

**Section 1.1 Identification and Adoption.** These Amended and Restated Bylaws are executed simultaneously with the execution of a certain Amended and Restated Declaration of Covenants, Conditions and Restrictions of Moss Creek Village at Winslow Farm Homeowners' Association, Inc., a part of the Winslow Farm Community (hereinafter referred to as the "Amended Declaration") to which these Bylaws are attached and of which they are made a part. The Amended Declaration is incorporated herein by reference and all of the covenants, conditions, rights, restrictions, and liabilities therein contained shall apply to and govern the interpretation of these Bylaws. The definitions and terms as defined and used in the Amended Declaration shall have the same meanings in these Bylaws and reference is hereby made to the definitions in Section 1 of the Amended Declaration. The provisions of these Bylaws shall apply to the Moss Creek Village Real Estate and to the administration and conduct of the affairs of the Moss Creek Village Homeowners' Association.

**Section 1.2 Individual Application.** All of the Moss Creek Village Lot Owners, tenants, their guests and invitees, or any other person who might now or hereafter use or occupy any Moss Creek Village Lot or any part of the Moss Creek Village Real Estate as provided therein, shall be subject to the rules, restrictions, terms and conditions set forth in the Amended Declaration and these Bylaws, as the same may be amended from time to time.

ARTICLE TWO

Meetings of Association

**Section 2.1 Purpose of Meetings.** At least annually and at such other times as may be necessary or appropriate, a meeting of the Owners shall be held for the purpose of electing the Board of Directors, approving the annual budget, providing for the collection of Common Expenses and Assessments, and for such other purposes as may be required by the Declaration and these Bylaws.

**Section 2.2 Annual Meetings.** Annual meetings shall be held in the month of

November in each calendar year. At each annual meeting, the Owners shall elect the Board of Directors of the Association in accordance with the provisions of these Bylaws and transact such other business as may properly come before the meeting.

Section 2.3 Special Meetings. A special meeting of the Members may be called by resolution of the Board of Directors or upon a written petition of the Owners who have not less than twenty-five percent (25 %) of the Class A and Class B membership votes. Any resolution or petition shall be presented to the President or Secretary of the Association and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 2.4 Notice and Place of Meetings. A meeting of the Members of the Association shall be held at any suitable place in Monroe County, Indiana, as may be designated by the Board of Directors. Written notice stating the date, time, place of any meeting, and in the case of a special meeting the purpose(s) for which the meeting is called, shall be delivered or mailed by the Secretary of the Association to each Member and, if applicable, to any Mortgagee, not less than fourteen (14) days prior to the date of such meeting. The notice shall be mailed or delivered to the Owners at their address as it appears upon the records of the Association. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

Section 2.5 Substitute Annual Meeting. If the annual meeting shall not be held on the day designated by the Bylaws, a substitute annual meeting may be called in accordance with the provisions of Section 2.4 of this Article. A meeting so called shall be designated and treated for all purposes as the annual meeting.

#### Section 2.6 Voting.

For the purposes of the conducting of meetings and voting at meetings, the Declarant shall be considered included within the term "Owner" for the purposes of these Bylaws. Voting rights shall be determined in accordance with the Declaration as follows:

Class A. Class "A" Members shall be Owners except Declarant and shall be entitled to one vote for each Lot owned. All persons holding an interest in any Lot shall be members provided, however, each Lot represented shall have only one vote as the Owners of such Lot may determine.

Class B. The Class "B" member shall be Declarant and Declarant shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall cease and terminate upon the Applicable Date.

2.6.1. Multiple Owner. Where the Owner of a Lot constitutes more than one person, or is a partnership, there shall be only one voting representative entitled to the vote allocable to that Lot. At the time of acquisition of title to be a Lot by a multiple Owner or a partnership, those persons constituting such Owner or the partners shall file with the Secretary of the Association a proxy appointing one of such persons or partners as the voting representative for such Lot which

shall remain in effect until such appointed representative relinquishes such appointment in writing, becomes incompetent, dies, or such appointment is otherwise rescinded by order of a court of competent jurisdiction, or the subject Lot which forms the basis of the vote is conveyed. Such appointed voting representative may grant a proxy to another to vote in his place at a particular meeting(s) pursuant to paragraph 2.6.3 of this Section 2.6, which shall constitute relinquishment of his right to act as voting representative for the Lot.

2.6.2 Voting by Corporation or Trust. Where a corporation or trust is an Owner or otherwise entitled to vote, the trustees may cast the vote on behalf of the trust, and the agent or other representative of the corporation duly empowered by the board of directors of such corporation shall cast the vote to which the corporation is entitled.

2.6.3 Proxy. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of State before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot; or, upon receipt of a notice by the Secretary, or the Board of Directors of the death or judicially declared incompetence of a member; or, upon the expiration of eleven (11) months from the date of the proxy. A form of proxy or written ballot may provide an opportunity to specify approval or disapproval with respect to any proposal;

2.6.4 Quorum. Except where otherwise expressly provided in the Declaration or these Bylaws, the Owners representing fifth percent (50%) of each class of membership, taken together, shall constitute a quorum at all meetings. The term majority of Owners or majority of vote, as used in these Bylaws, shall mean the Owners entitled to not less than fifty percent (50%) of the votes in accordance with the Declaration as such may be amended from time to time and shall not mean a majority of the persons or votes present or represented at such meeting.

2.6.5. Conduct of Meeting. The Chairman of the meeting shall be the President of the Association. The President shall call the meeting to order at the duly designated time, and business will be conducted in the following order:

Reading of Minutes. The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto.

Treasurer's Report. The Treasurer shall report to the members concerning the financial condition of the Association and to answer relevant questions of the Members concerning the common expenses and financial report for the prior year and the proposed budget for the current year.

Budget. The proposed budget for the current calendar year shall be presented to the Members for approval or amendment.

Election of Board of Directors. Nominations for the Board of Directors may be made by any Member from those persons who are eligible to serve. Such nominations must be in writing and presented to the Secretary of the Association at least ten (10) days prior to the annual meeting. Voting for the Board of

Directors will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a director. Each Member may cast his vote for each of as many nominees as are to be elected; however, he shall not be entitled to accumulate his votes. Those persons receiving the highest number of votes shall be elected. All voting for election of the Members of the Board of Directors shall be conducted by secret ballot.

Other Business. Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Association at least ten (10) days prior to the date of the meeting; provided, however, that such written requests may be waived at the meeting if all Members present at the meeting consent.

Adjournment. Upon completion of all business before the Association, the President, upon the motion of any Member, may adjourn the meeting; provided, however, that no annual meeting shall be adjourned until a budget is approved by the Members for the upcoming year.

## ARTICLE THREE

### Board of Directors

#### Section 3.1 Board of Directors.

3.1.1. The affairs of the Association shall be governed and managed by the Board of Directors. The initial Board of Directors shall be composed of three (3) persons.

3.1.2. The initial Board of three (3) Directors shall be selected by the Declarant and shall serve as the Board of Directors from the date upon which this Declaration is recorded in the Monroe County, Indiana, public records until the Applicable Date and the qualification of successor directors elected at a meeting of voting members.

3.1.3. This paragraph governs directors elected after the term of the initial Board of Directors has expired pursuant to 3.1.2. Directors shall be elected at the annual meeting of the Association and those persons who receive the highest number of votes shall be deemed to have been elected. The size of the Board of Directors may be increased from time to time upon the affirmative vote of seventy-five percent (75%) of all Owners provided that the Board of Directors shall not be less than three (3) in number nor more than five (5). After the Applicable Date, each Director shall hold office for a period of one (1) year or until his death, resignation, retirement, removal, disqualification or his successor is elected and qualified. Each Director shall be one of the Owners; provided, however, that in the event an Owner is a corporation, partnership, trust or other legal entity, other than a natural person, or persons, then an officer or director of such corporation, partner of such partnership, beneficiary of such trust or manager of such other entity, shall be eligible to serve as a member of the Board of Directors. Nothing herein contained shall be construed to prevent the election of a Director to succeed himself.

3.1.4 Vacancies in the Board, including vacancies due to any increase in the number of persons on the Board shall be filled by majority vote of the remaining Members thereof, except that a vacant position of the Board last filled by a person appointed by the Declarant shall be filled by a person appointed by the Declarant. Any director so elected or appointed to fill a vacancy shall hold office for a term equal to the unexpired term of the director he succeeds. Except as otherwise provided in this Declaration, the Common Area shall be managed by the Board and the Board shall act by majority vote of those present at its meetings when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt. A majority of the total number of Members of the Board shall constitute a quorum.

3.1.5 All meetings of the Board shall be open to attendance by any Lot Owner, except that the President may call the Board into executive session on matters of personnel, infractions of the rules and regulations of the Association, and matters of similar sensitivity. Any action taken by the Board in executive session shall be recorded in the minutes.

3.1.6 Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, if a written consent to such action is signed by all Directors and such consent is filed with the minutes of proceedings of the Board.

Section 3.2 Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonably necessary or appropriate to accomplish the performance of their duties. These powers include, but are not limited to, the power:

3.2.1 To employ a professional managing agent or real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board of Directors in performing its duties;

3.2.2 To purchase for the benefit of the Owners such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;

3.2.3 To procure for the benefit of the Owners fire and extended coverage insurance covering all Buildings, to the full replacement value thereof and to procure public liability and property damage insurance, Directors and officers liability insurance; Workmen's Compensation insurance, and such other insurance as the Board of Directors may determine is necessary for the benefit of the Owners and the Association;

3.2.4 To employ legal counsel, architects, contractors, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;

3.2.5 To include the costs of all of the above and foregoing as Common Expenses and assessments and to pay all of such costs therefrom;

3.2.6 To consent to amendment of the Declaration as therein provided;

3.2.7 To adopt, revise, amend and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation and employment of Moss Creek Village or the Common Areas;

3.2.8 To open and maintain a bank account or accounts in the name of the Association.

Section 3.3 Limitations on Board Action. The authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Seven Thousand Five Hundred Dollars (\$7,500.00) without obtaining the prior approval of a majority of Owners, except in the following cases:

3.3.1 Contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

3.3.2 Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting;

Section 3.4 Compensation. No Directors shall receive any compensation for any service to the Association except to such extent as a Director may be reimbursed for actual expenses incurred in the performance of the Director's duties.

Section 3.5 Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of Directors. The Secretary shall give notice of regular meeting of the Board to each Director personally or by United States mail at least five (5) days prior to the date of such meeting.

A special meeting of the Board of Directors may be called by the President or any two members of the Board of Directors. The person or persons calling such meeting shall give written notice thereof to the Secretary, who shall either personally or by mail and at least three (3) days prior to the date of such special meeting, give notice to the Directors. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place as designated in the notice.

At least once per year, the Board of Directors shall meet in join session with the Community Board of Directors of the Community Association for the purpose of addressing issues common to both associations.

Section 3.6 Waiver of Notice. Before any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting shall, as to such Director, constitute a waiver of notice of the time, place, and purpose thereof. If all Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 3.7 Quorum. At all meetings of the Board a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting at which a quorum is present shall be the decision of the Board.

Section 3.8 Non-Liability of Directors. The Directors shall not be liable to the Association for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or Bylaws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. Every contract made by the Board shall provide that the Board of Directors, in executing such contract, is acting as agent for the Association and shall have no personal liability thereunder.

Section 3.9 Additional Indemnity of Directors. The Association shall indemnify any person, his heirs, assigns, and legal representatives, made a part to any action, suit or proceeding by reason of the fact that the person is or was a Director of the Association, against the reasonable expenses, including attorney's fees, actually and necessarily incurred by the Director in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjusted in such action, suit or proceeding, if it shall be found by a majority of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered to be guilty of or liable for negligence or misconduct in the performance of his duties where acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent of the Association or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that the Director failed or neglected to attend a meeting or meetings of the Board of Directors.

Section 3.10 Bond. The Board of Directors shall require any or all officers and employees of the Association handling or responsible for Association funds to be covered by an adequate bond. The premiums on such bonds shall constitute a Common Expense.

Section 3.11 Informal Action of Directors. Action taken by a majority of the Directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all of the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action is taken.

## ARTICLE FOUR

### Officers

Section 4.1 Officers of the Association. The principal officers of the Association shall be the President, Vice President and Secretary/Treasurer, all of whom shall be elected by the Board of Directors. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person. Every officer will serve for a term of one (1) year except an officer filling the vacancy created by resignation, death or removal of his successor in which case, the officer shall serve for the unexpired term of his successor.

Section 4.2 Election of Officers. The officers of the Association shall be elected annually by the Board at the initial meeting of each new Board. Upon an affirmation vote of a two-thirds (2/3) majority of all members of the Board, any officer may be removed either with or without cause and the officer's successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 4.3 The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board of Directors, shall have and discharge all the general powers and duties usually vested in the office of the President or chief executive officer of an association or a stock corporation organized under the laws of Indiana, including, but not limited to, the power to appoint committees from among the Owners as he may deem necessary to assist in the affairs of the Association and to perform such other duties as the Board of Directors may from time to time prescribe.

Section 4.4 The Vice President. The Vice President shall be elected from among the directors and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice President shall also perform such other duties as these Bylaws may prescribe or as shall, from time to time, be imposed upon him by the Board or by the President.

Section 4.5 The Secretary. The Secretary shall be elected from among the Board of Directors. The Secretary shall attend all meetings of the Association and of the Board of Directors and shall keep or cause to be kept a true and complete record of proceedings of such meetings, shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association or the Board are duly given, mailed or delivered, in accordance with the provision of these Bylaws.

Section 4.6 The Treasurer. The Board shall elect from among the Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association and such other duties incident to the office of Treasurer. The Treasurer shall be the legal custodian of all monies, notes, securities and other valuables



which may from time to time come into possession of the Association, and shall immediately deposit all funds of the Association in some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name of the Association.

Section 4.7 Assistant Officers. The Board of Directors may from time to time designate and elect from among the Owners an Assistant Secretary and Assistant Treasurer, who shall have such powers and duties as the officers whom they are elected to assist shall delegate to them and such other powers and duties as these Bylaws or the Board of Directors may prescribe.

Section 4.8 Compensation. No officer shall receive compensation from the Association for acting as such.

## ARTICLE FIVE

### Assessments

Regular and Special Assessments shall be determined and collected as follows:

5.1 Annual Accounting. Annually, after the close of each calendar year and prior to the date for notice of the annual meeting of the Association, the Board of Directors shall cause to be prepared and shall furnish each Owner a financial statement, which statement shall show all receipts and expenses received, incurred, or paid during the preceding calendar year.

5.2 Proposed Annual Budget. Annually, on or before the date for notice of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing calendar year estimating the total amount of the Common Expenses for the ensuing year and shall furnish a copy of such proposed budget to each Owner prior to the annual meeting. The proposed annual budget shall be submitted to the Owners at the annual meeting of the Association for adoption, and if so adopted shall be the basis for the Regular Assessments for the ensuing calendar year. At the annual meeting of the Owners, the proposed budget may be approved in whole or in part, or may be amended in whole or in part by a majority of the Owners present or represented at the meeting (provided a quorum is present); provided, however, in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owner shall not constitute a waiver or release of the Owner to pay the Common Expenses.

5.3 Regular Assessments. The annual budget as adopted shall, based on the estimated cash requirement for the Common Expenses in the ensuing year as set forth in said budget, contain a proposed assessment against each Lot based on the total amount of said budget divided by the total number of Lots. The Regular Assessment against each Lot shall be paid in twelve (12) monthly installments on the first day of each month beginning in January following adoption of the budget. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors;

provided, however, that any Owner may elect to pay any Regular Assessment in advance. The Regular Assessment for each year shall become a lien on each separate Lot as of the date of the adoption of the annual budget.

5.4 Special Assessments. In addition to the Regular Assessments authorized above, the Association may levy such Special Assessments as may be necessary for the purpose of defraying, in whole or in part: (1) the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, and (2) the expense of any other contingencies or events not provided for in the annual budget or the reserves and the working capital of the Association; provided that no Special Assessments shall be levied without the assent of a majority of the Owners at a meeting duly called for this purpose. Each Owner shall pay the Association a Special Assessment based on the total sum approved to meet the costs and expenses as heretofore provided divided by the total number of Lots in Moss Creek Village. The Association may, in connection with the levy of any Special Assessment, specify that the same shall be payable in installments and specify the due dates thereof.

5.5 Adjustments. In the event that the approved budget and Regular Assessments plus the reserves and working capital of the Association provide insufficient to meet the Association's actual expenses in any year, such deficiencies may be corrected through one or more Special Assessments. In the event the approved Regular Assessments exceed actual expenses in any year, such surplus shall be retained and used to offset expenses in the next year(s) or returned to the Owners proportionately as the Board of Directors shall elect.

5.6 Temporary Budget and Assessments. If for any reason an annual budget and the Regular Assessments for any year have not been determined as of January 1 of any year, the budget and Regular Assessments in effect during the preceding year shall continue in effect until such time as the annual budget and annual assessments are determined in accordance with the Declaration and these Bylaws; provided, however, that said preceding budget and Regular Assessments may be increased by up to fifteen percent (15%) as the Board of Directors, by majority vote, may deem necessary in said temporary budget and Regular Assessments.

5.7 Reserve Funds. The Association shall be obligated to establish a reserve fund for the repair of the Common Area based upon good faith estimates of the useful life and replacement cost of such Common Area made or obtained by the Association. The reserve fund shall be funded through the payments by the Owners of Common Expenses subject to Regular Assessments and not by an extraordinary or Special Assessment. Extraordinary expenditures not originally included in the annual estimate that become necessary during the year shall be charged first against the reserve fund so established before any Special Assessment is made or levied for such expenditures. All amounts held by the Association pursuant to this Section 5.7 shall be maintained in a separate federally-insured account and any interest thereon shall be added to and deemed a part of such fund.

5.8 Status of Funds Collected by Association. All funds collected pursuant to this Article Five shall be held and expended by the Association solely for the purposes designed herein, and, except for such adjustments as may be required to reflect delinquent or prepaid

Regular or Special Assessments, shall be deemed to be held for the use, benefit and account of the Owners for the payment of Common Expenses.

5.9 Accounting Practices of the Association. The annual budget, the Regular Assessment and all sums assessed by the Association shall be established by using generally accepted accounting principles. The annual budget and the Regular Assessment shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area and of the Patio Homes to the extent such capital expenditures and replacement and repair is the obligation of the Association, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Area.

5.10 Community Assessments. Any Regular Assessment or Special Assessment levied by the Community Association shall be in addition to the Regular Assessments and Special Assessments provided for in this Article Five.

5.11 Collection of Assessments. Each Assessment shall be due and payable on the due date thereof as specified in the Declaration or in these Bylaws, or if not so specified, then on any due date(s) determined by the Board of Directors. Any Regular or Special Assessment which is not paid in full by the Delinquency Date shall be deemed delinquent without further notice or demand to the defaulting Owner, and shall bear interest on the unpaid balance thereof from the Delinquency Date until fully paid, at a rate of interest equal to eighteen percent (18%) per annum. In the event that any costs or expenses, including attorney's fees, are incurred by or on behalf of the Association with respect to the recovery or collection of any delinquent Assessment, all such costs and fees shall be due and payable immediately by such delinquent Owner and shall bear interest from the date incurred until paid in full, at a rate of interest equal to eighteen percent (18%) per annum. All interest and all costs and expenses payable hereunder with respect to a delinquent Assessment shall be added to and deemed a part of such delinquent Assessment and shall constitute a lien on the delinquent Owner's Lot and Patio Home as of the date on which such delinquent Assessment first became a lien. In the event that any Assessment is not fully paid on or before the Delinquency Date, the Association shall be entitled to accelerate and declare due and payable in full all installments of Assessments due for the calendar year in which such delinquency occurs, and to enforce payment of the same by foreclosure of said lien and/or other appropriate legal proceedings in accordance with the laws of the State of Indiana. The Owner and any occupant of the Patio Home shall be jointly and severally liable for the payment to the Association of reasonable rental for such Patio Home and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Patio Home and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board of Directors may at its option, bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same.

5.12 Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in the Declaration, the Articles of Incorporation of the Association or these Bylaws, any sale or transfer of a Lot or Patio Home to a Mortgagee pursuant to a foreclosure on its

mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosure shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior Owner from personal liability therefor.

## ARTICLE SIX

### Rules and Regulations

Section 6.1 Right of Board to Adopt Rules and Regulations. The Board of Directors may promulgate such additional rules and regulations regarding the operation of Moss Creek Village, including but not limited to the use of the Common Areas, as it may deem necessary from time to time and such rules as are adopted may be amended by a vote of a majority of the Board, and the Board shall cause copies of such rules to be delivered or mailed promptly to all Owners.

## ARTICLE SEVEN

### Amendment to Bylaws

Section 7.1 Prior to the Applicable Date, these Bylaws may be amended by a majority vote or by written consent of all initial directors. After the Applicable Date, these Bylaws may be amended by a vote of not less than sixty-six and two-thirds percent (66 2/3%) of the vote of the Owners in a duly constituted meeting called for such purpose. Provided, however, that no amendment to these Bylaws which materially impairs the right of any mortgagee or any party holding, insuring or guaranteeing any mortgage on all or any portion of Moss Creek Village may be made unless the Mortgagees consent in writing to the amendments.

## ARTICLE EIGHT

### Notices and Mortgagees

Section 8.1 Notice to Association. Any Owner who places a first mortgage lien upon his Lot or the Mortgagee thereof shall notify the Secretary of the Association and provide the name and address of the Mortgagee. A record of such Mortgagee and such name and address shall be maintained by the secretary and any notice required to be given to any Owner pursuant to the terms of the Declaration or these Bylaws shall be deemed given in the same manner and in the same effect to such Mortgagee.

Section 8.2 Notice of Unpaid Assessments. The Association shall, upon request of a Mortgagee, a proposed mortgagee or purchaser who has a contractual right to purchase a Lot, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments against the Lot, which statement shall be binding upon the Association and the Owners, and any mortgagee or grantee of the Lot shall not be liable

for nor shall the Lot conveyed be subject to a lien for any unpaid assessments in excess of the amount set forth in such statement.

Section 8.3 Notice and Representative. Any and all Mortgagees shall receive notice of meetings of the Association and shall receive specific notice from the Association of the intention of the Association to amend any provisions of the Declaration, Bylaws, or Articles of Incorporation of the Association; and any and all Mortgagees shall have the right to designate a representative to attend any meetings of the Association.

## ARTICLE NINE

### Insurance

Section 9.1 Insurance on Individual Mortgaged Lots. The Owner of any Lot shall carry property insurance through a company approved by the Board. This insurance should provide protection against loss or damage from fire and other hazards covered by the standard homeowner coverage, and in the amount equal to the full replacement value (i.e. 100% of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage).

Section 9.2 Minimum Requirement for Association Insurance. The Association shall as a minimum obtain and carry a policy of property insurance in an amount equal to the full replacement value (i.e. 100% of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage) of the common facilities owned by the Association (including all building service equipment and the like) with an "Agreed Amount Endorsement" or equivalent, a "Demolition Endorsement" or its equivalent, and, if necessary, an "Increased Cost of Construction Endorsement" or "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, such insurance to afford protection against at least the following:

9.2.1 loss or damage by fire and other hazards covered by the standard extended, coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and

9.2.2 such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

Section 9.3 Public Liability Insurance. The Association shall as a minimum carry and maintain in force a comprehensive policy of public liability insurance covering all of the Common Area located in Moss Creek Village insuring the Association with limits not less than \$1,000,000.00 covering all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, and, if applicable, garage-keeper's liability, host liquor liability, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

Section 9.4 Minimum Bonding Requirement. The Association shall be required to maintain adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of such Association and all others who handle, or are responsible for handling funds of the Association. Such fidelity bonds shall meet the following requirements:

9.4.1 all such fidelity bonds shall name the Association as an obligee; and

9.4.2 such fidelity bonds shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the Association, including reserves unless a greater amount is required by FNMA; and

9.4.3 such fidelity bonds shall contain waivers of any defense upon exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and

9.4.4 such bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days prior written notice.

Section 9.5 Director and Officers Insurance. The Association shall carry Director and Officers liability insurance in order to protect it from causes of action resulting from the actions or inactions of the Board.

Section 9.6 Workmen's Compensation Insurance. The Association shall carry Workmen's Compensation insurance if and to the extent necessary to meet the requirements of law.

Section 9.7 Additional Insurance. The Association shall carry any additional insurance as the Board of Directors may determine or the Declaration may require.

Certified to be the Amended and Restated Bylaws adopted by consent of the Directors of the Moss Creek Village at Winslow Farm Homeowners' Association, Inc., dated this 30th day of July, 2013.

I affirm under penalties of perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law.

Megan Lewis  
Name

By: Terry Lamirand  
Terry Lamirand

Its: TREASURER

This instrument prepared by: Megan Lewis, Lewis Law LLC, 1205 North Walnut Street, Bloomington, Indiana 47404-3565; (812) 336-6989.



**FIRST AMENDMENT TO THE AMENDED AND RESTATED  
BYLAWS  
OF MOSS CREEK VILLAGE HOMEOWNERS' ASSOCIATION, INC.  
AN INDIANA NOT-FOR-PROFIT CORPORATION**

THIS FIRST AMENDMENT TO THE RESTATED AND AMENDED BYLAWS (this "Amendment") of the Moss Creek Village Homeowners' Association, Inc., an Indiana nonprofit corporation, (the "Association"), pursuant to and in accordance with the terms and provisions of the RESTATED AND AMENDED Bylaws of Moss Creek Village Homeowners' Association Inc., adopted January 20, 2015, and recorded on February 4, 2015, as part of Instrument number 2015001550, in the Office of the Recorder of Monroe County Indiana (the "Bylaws").

**WITNESSETH**

WHEREAS, Pursuant to Article VII, Section 7.1 of the Bylaws, the Bylaws may be amended by the vote of not less than sixty-six and two-thirds percent (66 2/3%) of the vote of the Owners in a duly constituted meeting called for such purpose.

WHEREAS, pursuant to the Annual Meeting Minutes of the Association dated *October 9, 2024*, which are attached hereto and incorporated herein by reference, sixty-six and two-thirds percent (66 2/3%) of the votes cast at such meeting voted to amend the Bylaws as set forth herein.

NOW, THEREFORE, the Association hereby amends the Bylaws as follows:

1. Amendment of Article III, Section 3.3 Article III, Section 3.3 of the Bylaws is hereby amended to read as follows:

**Section 3.3 Limitations on Board Actions.** The authority of the board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Fifteen Thousand Dollars (\$15,000) without obtaining the prior approval of a majority of Owners, except in the following cases:

**3.3.1.** Contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

**3.3.2.** Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting.

2. Amendment of Article IX. Article IX, Section 9.1 of the Bylaws is hereby replaced to read as follows:

**Section 9.1 Insurance on Individual Mortgaged Lots.** The Owner of any Lot shall carry property insurance providing protection against loss or damage from fire and other hazards covered by the standard homeowner coverage, and in the amount equal to the full replacement value. Each Owner shall be solely

responsible for selecting and paying for homeowner's liability insurance and for insuring the contents of the Owner's Patio Home, including personal property stored elsewhere on the Property. Owners shall maintain coverage for at least, but not limited to, the following: footings; foundations and slabs under flooring; electric, gas, and plumbing services; fireplaces; duct work; insulation; floor coverings; drywall; drywall coverings such as painting, wallpaper, tile, decoration, and trim; light fixtures; appliances; storm doors and interior doors and trim; plumbing fixtures; heating, cooling, filtering units, ceiling and exhaust fans; window fixtures, glass surfaces, and window screens and treatments; cabinets, including but not limited to kitchen and bathroom cabinets, built-in bookcases and TV enclosures; owners furnishings and personal property; garage door openers; sunrooms and screened porches; and earthquake coverage for any item not mentioned. Additionally, Owners are encouraged to maintain utility insurance offered by the utility companies, such as electric, gas, and plumbing lines.

In the event a damaged or destroyed home is not insured or in the event the insurance proceeds are insufficient to pay the full cost of repair or reconstruction, uninsured repair or reconstruction cost shall be paid by the homeowners directly affected by the damage.

If any one or more of the homeowners directly affected by the damage or destruction shall refuse to make payments, the Board and the other homeowners directly affected shall be entitled to enforce such payment by any legal means.

3. Amendment of Article IX. Article IX, Section 9.2 of the Bylaws is hereby replaced to read as follows:

**Section 9.2 Minimum Requirement for Association Insurance.** The Association shall, as a minimum, obtain and carry a policy of property insurance in an amount equal to the full replacement value (i.e. 100% of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage) of the Common Area and carry a "bare-wall" policy of property insurance coverage of the original construction and design of the Patio Homes, such insurance to protect against at least the following: loss or damage by fire and other hazards covered by the standard extended coverage endorsement, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage.



**9.2.1** Such coverage is required to cover the exterior wall and load bearing walls; exterior brick and siding, interior stud walls and framing and stairs; interior perimeter support walls and beams; exterior doors, and window trim; garage doors; roofs, chimneys, and shingles; original porches, decks, and patios (excluding sunrooms and screened porches); guttering, soffit, fascia, and downspouts; and earthquake coverage for the above specified parts of the Patio Homes.

**9.2.2** Association shall be responsible for payments of the deductible on insurance carried by it when the damage is to property that is the Association's responsibility. However, in cases where the Board determines that the Owner was responsible for the loss, the Owner shall deposit with the Board as insurance trustee the amount of the deductible.

4. Effective Date of Amendment. This Amendment shall be effective as of the date this Amendment is recorded in office of the Recorder of Monroe County, Indiana.

5. Application. This Amendment shall apply to all current and future Owners of Lots in Moss Creek Village of Winslow Farms, Phase 1. This Amendment shall be perpetual, run with and bind all of the Real Estate subject to the Declaration and shall inure to the benefit of and be enforceable by the Association.

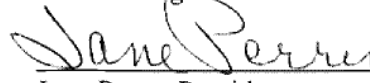
6. Incorporation. This Amendment shall be incorporated into and made a part of the Bylaws, and all provisions of the Bylaws not expressly modified or amended hereby shall remain in full force and effect.

7. Amendment Controls. In the event of any conflict between the provisions of this Amendment and the provisions of the Restated and Amended Declaration of Covenants, Conditions and Restrictions dated January 1, 2015, and recorded on February 4, 2015, as Instrument 2015001550, in the Office of the Recorder of Monroe County, Indiana (the "Declaration"), any future Amendments to the Declaration, the By-Laws, or the Rules and Regulations promulgated by the Association, the provisions of this Amendment shall control.

CERTIFIED TO BE THE FIRST AMENDMENT TO THE AMENDED AND RESTATED BYLAWS adopted by consent of the Owners in the Moss Creek Village Homeowners' Association, Inc., dated this 25th of Nov, 2024

**Moss Creek Village Homeowners' Association, Inc.**

By:

  
Jane Perry, President

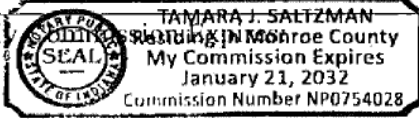
STATE OF INDIANA            )  
  )    SS:  
COUNTY OF MONROE        )

Before me, a Notary Public in and for said County and State, personally appeared Moss Creek Village Homeowners' Association, Inc., by its President, Jane Perry, being known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged the execution of the foregoing *First Amendment to the Restated and Amended Bylaws of Moss Creek Village Homeowners' Association, Inc.*, to be her free and voluntary act and deed for the uses and purposes therein expressed, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 25<sup>th</sup> day of November, 2024.

Tamara J. Saltzman  
Notary Public of the State of Indiana

Tamara J. Saltzman  
Printed name

M  
  
TAMARA J. SALTZMAN  
Residing in Monroe County  
My Commission Expires  
January 21, 2032  
Commission Number NP0754028  
County of Residence

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. /s/ Pamela J. Hensler.

This Instrument prepared by Pamela J. Hensler, Mallor Grodner, LLP, 511 Woodcrest Drive, Bloomington IN 47401

**Restated and Amended  
Declaration of Covenants, Conditions and Restrictions  
of  
Moss Creek Village at Winslow Farm, Phase I**

This RESTATED and AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Amended Declaration") made this 30<sup>th</sup> day of JULY, 2013, by the Moss Creek Village at Winslow Farm Homeowners ("Moss Creek Village").

RECITALS

(A) The Moss Creek Village Owners are the owners of the fee simple title to the Real Estate; and

(B) Moss Creek Village was previously platted and subjected to the terms and conditions of the Declaration of Covenants, Conditions and Restrictions of Moss Creek Village at Winslow Farm, Phase I, as previously recorded on September 14, 1995 as instrument 513202 in the Office of the Recorder of Monroe County, Indiana (the "Original Declaration").

(C) The Original Declaration provided that the Moss Creek Village Owners could amend the Original Declaration by not less than seventy-five percent (75%) of the Class A and Class B votes cast.

(E) On November 8, 2012, more than seventy-five percent (75%) of the Owners approved the Amended Declaration at a meeting of the Moss Creek Village Owners duly called and held.

(G) The Moss Creek Village Owners wish to record the Amended Declaration pursuant to the provisions of Section 22.4 of the Original Declaration and upon recording, the Amended Declaration shall become effective and shall supersede the Original Declaration and apply to all Moss Creek Village Lots and to each Moss Creek Village Owner.

NOW, THEREFORE, the undersigned officers of the Moss Creek Village at Winslow Farm Homeowners' Association, Inc., acting on behalf of the Owners declare that the Moss Creek Village Lots subjected to the terms of this Amended Declaration shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the covenants and restrictions hereinafter set forth expressly and exclusively for the use and benefit of the Moss Creek Village Lots

and of each and every person or entity who now or in the future owns any Moss Creek Village Lot within Moss Creek Village, a neighborhood developed within Winslow Farm.

**Section 1. Definitions.** The following terms used in this Declaration shall have the following meanings:

1.1. Additional Real Estate. "Additional Real Estate" means the real property described on **Exhibit "C"**, which may be added to Moss Creek Village and subjected to this Declaration by Declarant in the future.

1.2. Applicable Date. "Applicable Date" means the first to occur of the following events: (i) the date the Class "B" member voluntarily resigns by tendering a written resignation to the resident agent of the Association; or, (ii) the date when Declarant sells all lots in all Phases of Moss Creek Village; or, (iii) December 31, 2005.

1.3. Association. "Association" means Moss Creek Village at Winslow Farm Homeowners' Association, Inc., its successors and assigns, an Indiana not-for-profit corporation which is the incorporated association of Owners, more particularly described in Section 10. A copy of the *Articles of Incorporation* for the Association is attached as **Exhibit "A"**.

1.4. Board of Directors. "Board of Directors" means the governing body of the Association elected by the Owners in accordance with the By-Laws.

1.5. By-Laws. "By-Laws" means the By-Laws of the Association, providing for the administration and management of the Association, a true copy of which is attached to this Declaration as **Exhibit "B"** and incorporated herein by reference.

1.6. Common Area. "Common Area" means all the area in Moss Creek Village outside the boundaries of any Lot.

1.7. Common Expenses. "Common Expenses" means the expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Area and other costs and expenses incurred by the Association for the common benefit of all Owners; provided, however, that Common Expenses shall not include any costs of initial construction of any Patio Home or any expenses assumed or incurred by the Community Association.

1.8. Community Association. "Community Association" means Winslow Farm Community Association, Inc., its successors and assigns, an Indiana not-for-profit corporation which is the incorporated Association of all Owners in Winslow Farms.

1.9. Declarant. "Declarant" means Wininger/Stolberg Communities LLC developer of Moss Creek Village, and any successor or assignee of its interest in all or part of Moss Creek Village or in this Declaration under an instrument or instruments which expressly state that the successor or assignee thereunder shall become the Declarant for purposes of this Declaration.

1.10. Delinquency Date. "Delinquency Date" means the date which is ten (10) days after the due date of any Regular or Special Assessment.

1.11. Lot. "Lot" means any plot of ground designated as such upon the recorded Plat of Moss Creek Village at Winslow Farm or any part and thing upon which one (1) Patio Home is constructed, is to be constructed or has existed. Whenever used in the Declaration, "Lot" will be deemed to include the Patio Home, if any, located thereon.

1.12. Mortgagee. "Mortgagee" means the holder of any recorded first mortgage lien on any Lot.

1.13. Owner. "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, which owns the record fee simple title to a Lot; provided that persons or entities owning a single Lot as tenants in common, joint tenants, tenants by the entireties or any form of joint or divided ownership, shall be deemed one Owner for purposes of this Declaration.

1.14. Patio Home. "Patio Home" means one of the attached single-family residential living units constructed upon a Lot.

1.15. Plat. "Plat" means the Plat prepared by Smith-Neubecker and Associates of Moss Creek Village at Winslow Farm, Phase I, being on record in the Office of the Recorder of Monroe County, Indiana, as document number \_\_\_\_\_ in Plat Cabinet \_\_\_\_\_, Envelope \_\_\_\_\_. Additional phases of Moss Creek Village, upon recording of the Plat with the Monroe County Recorder's Office, will also be included in such definition.

1.16. Moss Creek Village. "Moss Creek Village" means all phases of Moss Creek Village, as platted.

1.17. Property. "Property" means the Common Area, Patio Homes and all other improvements of every kind and nature whatsoever, now or hereafter located upon the Real Estate and used in connection with the operation, use and enjoyment of Moss Creek Village.

1.18. Phase I Real Estate. "Phase I Real Estate" means the real property described on **Exhibit "D"**, which has been subjected to this Declaration and all of the Property located upon the Real Estate.

1.19. The Winslow Farm Declaration. "The Winslow Farm Declaration" means the Declaration of Covenants, Conditions and Restrictions of Winslow Farm as recorded in the Office of the Recorder of Monroe County, Indiana.

**Section 2. Declaration.** Declarant hereby expressly declares that the Phase I Real Estate shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

**Section 3. Description of Moss Creek Village, Phase I.** Moss Creek Village at Winslow Farm, Phase I, consists of \_\_\_\_\_ (\_\_\_\_\_) Lots numbered \_\_\_\_\_ through \_\_\_\_\_, inclusive, together with the Common Area shown on the Plat. The size of the Lots are as designated on the Plat. The legal description for each Lot in Moss Creek Village at Winslow Farm, Phase I shall be as follows:

Lot \_\_\_\_\_ in Moss Creek Village at Winslow Farm, Phase I, a subdivision in Monroe County, Indiana, as per Plat thereof recorded \_\_\_\_\_, 1995 in Plat Cabinet \_\_\_\_\_, Envelope \_\_\_\_\_ in the Office of the Recorder of Monroe County, Indiana.

**Section 4. Lots and Easements.** The boundaries of each Lot in Moss Creek Village shall be as shown on the Plat; provided, however, in the event any vertical boundary line of any Patio Home does not coincide with the actual Lot line because of inexactness of construction, settling after construction or for any other reasons, whether from the initial construction or subsequent reconstruction, the boundary lines shall be deemed to be treated for purposes of occupancy, possession, maintenance, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the Owner of each Lot in and to such base line outside the actual boundary line of the Lot.

**Section 5. Common Area.** Common Area includes all area within Moss Creek Village, except the Lots, including but not limited to the interior roads, sidewalks, parking areas, entrance signage and ponds. Declarant warrants and guarantees to the Association, for one year from the date Declarant executes the Warranty Deed to the Association transferring the Common Area, that all materials and workmanship are free from material defects and that all improvements in the Common Area have been constructed in substantial compliance with the requirements of applicable government ordinances. This warranty specifically excludes any claims for defects in landscaping materials, paving surfaces or ponds. Upon receipt from any Owner of a written notice specifically identifying the defective condition, Declarant shall, within sixty (60) days thereof, inspect the Common Area and if such inspection discloses material defects in material or workmanship, Declarant will, without cost to the Association, remedy such defects within a reasonable time. Declarant shall not be responsible for any conditions, defects or damage which are the result of ordinary expansion and contraction or caused by acts of God. If no written claim is made as provided herein within one (1) year after the deed is executed by

Declarant, all claims against Declarant are expressly waived by the Association and all Owners with respect to the Common Area.

**Section 6. Ownership of Common Area.** The Common Area shall be conveyed to or owned by the Association, and shall be held for the use and enjoyment of the Owners, all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to every Lot, subject to the provisions of this Declaration, including but not limited to the following:

6.1. The right of the Association, upon approval by a written instrument signed by two-thirds of all Class A and B Owners and by two-thirds of all first Mortgagees, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such Common Area purposes and subject to such conditions as may be agreed by the Association.

6.2. The right of the Association to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Section 11.

6.3. The Common Area for each Phase in Moss Creek Village shall be conveyed to or owned by the Association at the time of conveyance of the last Lot in the particular Phase of Moss Creek Village; provided, however, that expenses relating to the maintenance of the Common Area within each Phase are to be included within the Association budget from the time of conveyance of the first Lot in the particular Phase of Moss Creek Village.

**Section 7. Delegation of Use of the Common Area.** Any Owner may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Association, his right of enjoyment, and the use of the Common Area and facilities to members of his family, his tenants or contract purchasers who reside in any Patio Home.

**Section 8. Encroachments and Easements in Common Area.** If by reason of inexactness of construction, settling after construction or for any other reasons, any Common Area encroaches upon any Lot, an easement shall be deemed to exist and run to the Association for the maintenance, use and enjoyment of such Common Area.

Each Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, located in any other Patio Homes or in the Common Area and serving his Patio Home.

**Section 9. Easement for Utilities and Public and Quasi-Public Vehicles.** All public and quasi-public vehicles including but not limited to police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles shall have the right to enter upon the Common Area in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including but not limited to water, sewer, gas, telephone and electricity on the Property, provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines or other

utilities, except as initially designed and approved by Declarant on the Plat or as thereafter may be approved by Declarant or by the Board of Directors. By virtue of this easement the electrical and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Property and to affix and maintain electrical and telephone wires, circuits and conduits. All utility pipes, conduits, wires or circuits will be installed underground. In the event any utility furnishing service should request a specific easement by a separate recordable document, Declarant shall have the right to grant such easement on such Property, without conflicting with the terms of this section. The easements granted herein shall in no way affect any other recorded easement on the Property.

An easement is also granted to the Community Association, its officers, agents and employees and to any management company, if any, selected by the Community Association to enter in or to cross over the Common Area to perform its duties of maintenance, repair or replacement of the ponds and entrance signage located within Moss Creek Village.

**Section 10. Association.** In order to provide for the maintenance and repair, replacement, administration, operation and ownership of the Common Area, and to perform such other function as may be designated to it, there is hereby created a not-for-profit corporation which shall be known as Moss Creek Village Winslow Farm Homeowners' Association, Inc. Each Owner shall automatically be a Member of the Association, but membership shall terminate when such person ceases to be an Owner, and will be transferred to the new Owner; provided, however, any person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a Member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of Association. The Association shall have two classes of Members:

10.1. **Class A.** Class A Members shall be all Owners except Declarant and shall be entitled to one vote for each Lot owned. All persons holding an interest in any Lot shall be Members provided, however, each Lot represented shall have only one vote as the Owners of such Lot may determine.

10.2. **Class B.** Class B Member shall be Declarant and Declarant shall be entitled to ten (10) votes for each Lot owned. The Class B Membership shall cease and terminate upon the Applicable Date.

The initial Board of Directors shall be as designated in the Articles of Incorporation, and such Directors, notwithstanding any provision in this Declaration or the Articles or the By-Laws to the contrary, shall be Directors until the Applicable Date. If there is a vacancy in the initial Board for any reason prior to the Applicable Date every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the initial Board. After the Applicable Date, the Association shall elect a Board of Directors annually in accordance with and as prescribed by the By-Laws. The Members shall be entitled to vote for the election of the Board of Directors in accordance with the procedure outlined in the By-Laws. The Board of Directors shall be the governing body of the



Association representing all of the Members and being responsible for the functions and duties of the Association including but not limited to the management, maintenance, repair, replacement and upkeep of the Common Area. The Common Area shall be owned, operated and managed by the Association.

**Section 11. Right of Board of Directors to Adopt Rules and Regulations.** The Board of Directors may promulgate such additional rules and regulations regarding the operation of the Property, including but not limited to the use of the Common Area, as it may deem necessary from time to time. Such rules as are adopted may be amended by vote of a majority of the Board, and the Board shall cause copies of such rules to be delivered and mailed promptly to all Owners.

**Section 12. Real Estate Taxes.** Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot, but are assessed and taxed on the Real Estate as a whole, without a breakdown for each Lot, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Real Estate assessed as a whole, which shall be the ratio that the square footage in his Lot bears to the total square footage of all the land comprising the Real Estate assessed as a whole; and shall pay his proportionate share of the real estate taxes assessed on any improvements constructed on his Lot. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Association and treated as a Common Expense.

**Section 13. Utilities.** Each owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Association.

**Section 14. Maintenance, Repairs and Replacements.** Each Owner shall at his expense be responsible for the maintenance, repairs, decoration and replacement within his own Patio Home except as may otherwise be provided herein. All fixtures and equipment installed within the Patio Home commencing at a point where the utility lines pipes, wires, conduits or systems enter the exterior walls of a Patio Home shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair in his Patio Home, which if neglected, might adversely affect any Patio Home, Common Area or the value of the Property. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances, doors, windows, lamps, and all other accessories belonging to the Owner and appurtenant to the Patio Home. Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Association, as a part of the Common Expense.

In addition to the maintenance of the Common Area, the Association shall provide exterior maintenance upon each Lot and Patio Home for the following: paint, repair, replacement and care of all exterior doors, roofs, gutters, downspouts, exterior building surfaces, and other exterior improvement excluding, however, any glass surfaces, screens, window fixtures, other hardware and decks which shall be the sole responsibility of the Owner.

The cost of maintaining, servicing and operating any sewer lateral that serves Patio Homes in Moss Creek Village from the point where the sewer line exits the Patio Home to the point where the sewer lateral connects to the City of Bloomington sewer main shall be a Common Expense borne by the Association. The location of the sewer laterals are shown on the Plat. The Association agrees to indemnify and hold the City of Bloomington, Indiana harmless from any claim for injury or damage arising as a result of the Association's failure to properly maintain, service or operate any single sewer lateral that serves two (2) Patio Homes. Further, each Owner hereby waives its claim, if any, that may arise from the Association's negligent maintenance, service or operation of such sewer lateral.

The Association shall also maintain any trees, shrubs, grass or walks which the Association or Declarant originally planted or installed upon any Lot; any trees, shrubs or landscaping done by an Owner upon the Owner's Lot shall be maintained by the Owner. If the need for maintenance and repair results from the willful or negligent act of the Owner, his family, guests or invitees, and is not covered or paid for by insurance on such Lot, the cost of such maintenance or repair shall be borne by the Owner, and shall be added to and become a part of the assessment to which his Lot is subject and be subject to the same method of collection as the Regular Assessment.

The Board of Directors, or their designated agents, shall have the right at reasonable times, and upon reasonable prior notice (except in cases of emergency in which case no notice will be required) to enter into each individual Patio Home for purposes of inspection of the Common Area appurtenant thereto, and replacement, repair and maintenance of the same.

**Section 15. Alterations, Additions and Improvements.** Without the prior written approval of the Board of Directors, no Owner may make any alterations, additions, improvements, repairs, change of colors, excavation, changes in grade or other work which in any way alters the exterior of any Lot or Patio Home located thereon from its natural or improved state existing on the date such Lot was first conveyed by Declarant to the Owner except as otherwise expressly provided in this Declaration.

**Section 16. Assessments.** Regular and Special Assessments shall be determined and collected as follows:

16.1. **Annual Accounting.** Annually after the close of each calendar year of the Association and prior to the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared and furnished each Owner a financial statement, which statement shall show all receipts and expenses received, incurred or paid during the preceding calendar year.

16.2. **Proposed Annual Budget.** Annually on or before the date for notice of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing calendar year estimating the total amount of the Common Expenses for the ensuing year and furnish a copy of such proposed budget to each Owner prior to the annual meeting. The proposed

annual budget shall be submitted to the Owners at the annual meeting of the Association for adoption, and if so adopted shall be the basis for the Regular Assessments for the ensuing calendar year. At the annual meeting of the Owners, the proposed budget may be approved in whole or in part, or may be amended in whole or in part by a majority of the Owners present or represented at the meeting (provided a quorum is present); provided, however, in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owner shall not constitute a waiver or release of the Owner to pay the Common Expenses.

16.3. Regular Assessments. The annual budget as adopted shall, based on the estimated cash requirement for the Common Expenses in the ensuing year as set forth in said budget, contain a proposed assessment against each Lot based on the total amount of said budget divided by the total number of Lots (herein called the "Regular Assessment"). The Regular Assessment against each Patio Home shall be paid in twelve (12) monthly installments on the first day of each month beginning in January following adoption of the budget. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors as directed by the Board of Directors; provided, however, that any Owner may elect to pay Regular Assessments in advance. The Regular Assessment for each year shall become a lien on each separate Lot and Patio Home as of the date of the adoption of the annual budget.

16.4. Special Assessments. In addition to the Regular Assessments authorized above, the Association may levy such Special Assessments as may be necessary for the purpose of defraying, in whole or in part: (1) the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto; and (2) the expense of any other contingencies or events not provided for in the annual budget or the reserves and working capital of the Association; provided that no Special Assessments shall be levied without the assent of a majority of the Owners at a meeting duly called for this purpose. Each Owner shall pay the Association a Special Assessment based on the total sum approved to meet the costs and expenses as heretofore provided divided by the total number of Lots in Moss Creek Village. The Association may, in connection with the levy of any Special Assessment, specify that the same shall be payable in installments and specify the due dates thereof.

16.5. Adjustments. In the event that the approved budget and Regular Assessments plus the reserves and working capital of the Association provide insufficient to meet the Association's actual expenses in any year, such deficiencies may be corrected through one or more Special Assessments. In the event the approved and Regular Assessments exceed actual expenses in any year, such

surplus shall be retained and used to offset expenses in the next year(s) or returned to the Owners proportionately as the Board of Directors shall elect.

16.6. Temporary Budget and Assessments. If for any reason an annual budget and the Regular Assessments for any year have not been determined as of January 1 of any such year, the budget and Regular Assessments in effect during the preceding year shall continue in effect until such time as the annual budget and Regular Assessments are determined in accordance with the Declaration and the By-Laws; provided, however, that said preceding budget and Regular Assessments may be increased by up to fifteen percent (15%) as the Board of Directors, by majority vote, may deem necessary in said temporary budget and Regular Assessments.

16.7. Reserve Funds. The Association shall be obligated to establish a reserve fund for the repair of the Common Area based upon good faith estimates of the useful life and replacement cost of such Common Area made or obtained by the Association. The reserve fund shall be funded through the payments by the Owners of Regular Assessments and not by an extraordinary or Special Assessment. Extraordinary expenditures not originally included in the annual estimate that become necessary during the year shall be charged first against the reserve fund so established before any Special Assessment is made or levied therefor. All amounts held by the Association pursuant to this Section 16.7 shall be maintained in a federally-insured account and any interest thereon shall be added to and deemed a part of such fund.

16.8. Status of Funds Collected by Association. All funds collected pursuant to this Section 16 shall be held and expended by the Association solely for the purposes designated herein, and, except for such adjustments as may be required to reflect delinquent or prepaid Regular or Special Assessments, shall be deemed to be held for the use, benefit and account of the Owners for the payment of Common Expenses.

16.9. Accounting Practices of the Association. The annual budget, the Regular Assessment and all sums assessed by the Association shall be established by using generally accepted accounting principles. The annual budget and the Regular Assessment shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area and of Patio Homes to the extent such capital expenditures and replacement and repair is the obligation of the Association, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Area. Such replacement reserve fund for capital expenditures and repair of the Common Area shall be maintained by the Association in a separate, federally insured interest-bearing account or accounts selected from time to time by the Board of Directors.

16.10. Community Assessments. Any Regular Assessment or Special Assessment levied by the Community Association shall be in addition to the Regular Assessments and Special Assessments provided for in this Section 16.

16.11. Collection of Assessments. Each Assessment shall be due and payable on the due date thereof as specified in this Declaration or in the By-Laws, or if not so specified, then on any due date(s) determined by the Board of Directors. Any Regular or Special Assessment which is not paid in full by the Delinquency Date shall be deemed delinquent without further notice or demand to the defaulting Owner, and shall bear interest on the unpaid balance thereof from the Delinquency Date until fully paid, at a rate of interest equal to eighteen percent (18%) per annum. In the event that any costs or expenses, including attorney's fees, are incurred by or on behalf of the Association with respect to the recovery or collection of any delinquent Assessment, all such costs and fees shall be due and payable immediately by such delinquent Owner and shall bear interest from the date incurred until paid in full, at a rate of interest equal to eighteen percent (18%) per annum. All interest and all costs and expenses payable hereunder with respect to a delinquent Assessment shall be added to and deemed a part of such delinquent Assessment and shall constitute a lien on the delinquent Owner's Lot and Patio Home as of the date on which such delinquent Assessment first became a lien. In the event that any Assessment is not fully paid on or before the Delinquency Date, the Association shall be entitled to accelerate and declare due and payable in full all installments of Assessments due for the calendar year in which such delinquency occurs, and to enforce payment of the same by foreclosure of said lien and/or other appropriate legal proceedings in accordance with the laws of the State of Indiana. The Owner and any occupant of the Patio Home shall be jointly and severally liable for the payment to the Association of reasonable rental for such Patio Home and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Patio Home and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board of Directors may at its option, bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same.

16.12. Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles of Incorporation of the Association or the By-Laws, any sale or transfer of a Lot or Patio Homes to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior Owner from personal liability therefor.

**Section 17. Insurance.** Each Patio Home in Moss Creek Village will be insured with the same company chosen by the Board of Directors of Association. The limit of

insurance for each Patio Home will be equal to the full replacement cost thereof and each owner will be responsible for the premium for their individual Patio Home. Such insurance coverage shall be for the benefit of each Owner, the Homeowner's Association and the Owner's Mortgagee (if applicable). In the event of damage or destruction to any Patio Home, the Owner, Mortgagee (if applicable) and Homeowner's Association shall use such insurance proceeds to repair or restore the damaged property. If for any reason an Owner does not pay the premium allocated to their Home, the Association will add such cost to the Owner's Assessment, which will become immediately due and payable.

The Association, acting through its Board of Directors, shall obtain fire and extended coverage insurance insuring all improvements in the Common Area, in an amount equal to full replacement cost thereof. The Association shall also obtain comprehensive public liability insurance in such limits as the Board of Directors shall deem appropriate together with workmen's compensation and other liability insurance if deemed necessary and appropriate by the Board of Directors. Such insurance shall also cover any liability claims of any Member of the Association. The premium for the insurance obtained by the Association shall be paid by the Association as part of the Common Expenses.

Each Owner shall have the right to purchase at his own expense any additional insurance he may deem necessary, and each Owner shall be solely responsible for homeowner's liability insurance and for the insurance on the contents of his Patio Home and his personal property stored elsewhere on the Property. All insurance obtained, whether obtained by the Association or the Owners, including but not limited to insurance on the individual Patio Homes, insurance on improvements in the Common Area and liability insurance, shall provide that the insurance company providing such insurance waives its right of subrogation, if any, against the Owners, the Association and their agents.

**Section 18. Casualty and Restoration.** In the event of damage or destruction of any Patio Home by fire or other casualty, the Owner thereof shall cause such Patio Home to be promptly repaired and restored. The proceeds of insurance carried for the benefit of the Owner and Mortgagee for such purpose shall be applied to the cost of such restoration. If the insurance proceeds are inadequate to cover the costs of reconstruction or if there are no proceeds, the Owners of the Patio Homes directly affected by the damage shall pay the cost for restoring the Patio Home. A Patio Home shall be deemed directly affected if and only if a part of such Patio Home, including but not limited to, any party wall of such Patio Home, is damaged or destroyed. If any Owner fails or refuses to reconstruct his Patio Home when required, the Association may pursue whatever legal means are available to cause such restoration, including but not limited to the Association completing the restoration and paying the cost thereof, with the cost attributable to the Owner or Owners who refuse or fail to make the restoration when required becoming a lien on such defaulting Owner's Lot and subject to foreclosure in the same manner as provided for Regular Assessments.

The restoration referred to in this Section 18 shall include the construction costs rebuilding the Patio Homes in the same condition as they existed immediately prior to the destruction or damage and with the same type of architecture. Notwithstanding any other provisions in this Declaration, all Patio Homes which are destroyed or damaged

shall be restored pursuant to the provisions of this Section 18 of this Declaration, unless a majority vote of the Members of the Association decide that such restoration is not necessary, and all improvements in the Common Area which are damaged or destroyed shall be restored by the Association unless two-thirds of the Class A and B Members of the Association and two-thirds of all first Mortgagees decide not to make such restoration or to make such restoration in a different manner.

In the event the Association has insurance proceeds which are to be used for the benefit of the Owners, no distribution of such insurance proceeds shall be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event, any remittances shall be to the Owner and Mortgagee jointly. The same method of distribution shall also apply to distribution of any condemnation awards in connection with any taking of any of the Common Area.

In the event of damage to or destruction of any of the Common Area due to fire or other casualty or disaster and the insurance proceeds, if any, received by the Association as a result of such fire or other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged and destroyed (or the cost thereof in excess of insurance proceeds received, if any) shall be paid by the Association through a Special Assessment of the Owners with each Owner being assessed an equal amount.

**Section 19. Covenants and Restrictions.** The following covenants and restrictions on the use and enjoyment of the Lots, Patio Homes, Common Area and Property are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, by the Association, its successors or assigns. Owners and the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation:

19.1. Except for the initial construction of Patio Homes, no additional buildings shall be erected or located on the Real Estate other than on the Lots or as otherwise shown on the Plat except as originally constructed by Declarant or as approved in writing by the Board of Directors.

19.2. Nothing shall be done or kept in any Patio Home or in the Common Area which will cause an increase in the rate of insurance on any other Patio Home or the contents thereof. No Owner shall permit anything to be done or kept in his Patio Home or in the Common Area which will result in the cancellation of insurance or any other Patio Home or contents thereof, or which would be in violation of any law or ordinance.

19.3. No Owner shall cause or permit anything to be hung or displayed on the outside of the windows, or placed on the outside walls of his Patio Home and no

sign, awning, canopy, shutter or radio or television antennae, or other attachment or things shall be affixed to or placed upon the exterior walls or roofs, or on any parts of any Patio Home without the prior written consent of the Board of Directors.

19.4. All Lots and the Common Area shall be kept free and clear of rubbish, debris, and other unsightly materials, except in those areas designated for the temporary storage thereof.

19.5 All Owners and members of their families, guests or invitees, and all occupants of any Patio Home or any other persons entitled to use the same and to use and enjoy the Common Area or any part thereof shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board of Directors governing the operation, use and enjoyment of the Common Area.

19.6. No Owner shall be allowed to plant trees, landscape or do any gardening in the Common Area except with express written permission from the Board of Directors.

19.7 No Owner shall erect or permit the erection of any outdoor basketball goal, recreational equipment or other structure, whether permanently installed or on a portable base, anywhere in the Common Area or on Owner's Lot.

19.8 No outdoor satellite dishes, radio or television antennae or other electronic receivers shall be installed or allowed to remain anywhere on any Lot or in any Common Area. RCA DSS 19" systems and similarly sized electronic receivers are allowed in the Project if all the system's components are properly located, screened and landscaped in order to conceal them from public view in a manner determined acceptable by Declarant, in Declarant's sole discretion. Following the Applicable Date, the determination as to the location, screening and landscaping for such components shall be determined by the Board of Directors, in the Board of Directors' sole discretion.

19.9. All Lots, Patio Homes and Property are subject to the covenants, restrictions and easements of The Winslow Farm Declaration.

19.20 It is the policy of the Moss Creek Village Homeowners' Association that residential units shall not be used as rental property. In case of hardship, the Board has the authority to enter into an agreement with the owner regarding the basis for and length of such a lease, not to exceed one year.

**Section 20. Notice to Association.** Any Owner who places a first mortgage lien upon his Lot or the Mortgagee shall notify the secretary of the Association thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws, or otherwise, shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record



in the time provided. Unless notification of any such mortgage and the name and address of the Mortgagee are furnished to the secretary either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage or otherwise.

The Association shall upon request of the Mortgagee who has furnished the Association with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

**Section 21. Annexation of Additional Phases.** In addition to the Phase I Real Estate, Declarant is the fee simple owner of the Additional Real Estate located contiguous to the Real Estate.

At any time, Declarant without the consent of the Owners may, but is not obligated to, develop the Additional Real Estate or any part thereof, in substantially the same manner as Moss Creek Village at Winslow Farm, Phase I and file one or more Supplemental Declarations and Plans for such Additional Real Estate or part thereof as it desires and convey the Common Area thereof to Moss Creek Village at Winslow Farm Homeowners' Association, Inc.

In the event the Additional Real Estate or any part of it is platted in a manner similar to Moss Creek Village at Winslow Farm, Phase I, the Owners of such Lots in the Real Estate or parts thereof, shall have the same rights and obligations as the Owners herein, and the Association shall have the same jurisdiction and authority over such Additional Real Estate or parts thereof as its authority and jurisdiction herein.

In the event Declarant decides not to develop or plat the Additional Real Estate or any part of it in a manner similar to Moss Creek Village at Winslow Farm, Phase I, Declarant shall file a Declaration stating that the Additional Real Estate or any part thereof shall not be developed as contemplated herein.

Regardless of the method of development of the Additional Real Estate, and whether or not all or any part of the Additional Real Estate comes within the jurisdiction of the Association, Declarant reserves unto itself, its successors and assigns, for the use and benefit of that part of the Additional Real Estate not coming within the jurisdiction of the Association the right and easement to enter upon the streets and Common Areas of Moss Creek Village at Winslow Farm, Phase I to provide ingress and egress to the Additional Real Estate.

Declarant hereby grants to the Owners in Moss Creek Village at Winslow Farm, Phase I, the right and easement to enter upon any improved streets and roadways that may exist in the Additional Real Estate to provide ingress and egress to Moss Creek Village at Winslow Farm, Phase I as may be necessary.

It is the purpose and intent of the easements herein granted and reserved, to provide free and unrestricted use and access across the roadways and streets of the Phase I Real Estate and Additional Real Estate for the Owners of the Lots and Additional Real Estate, their guests, invitees, and all public and quasi-public vehicles, including but not limited to, police, fire and emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles.

The assessment which the Owner of each Lot in the Additional Real Estate or part thereof, if within the jurisdiction of the Association, shall be obligated to pay shall be equal to that paid by any Owner and shall commence on the date of conveyance of such Lot by Declarant. No assessment on any Lot in the Additional Real Estate shall be due until the earlier of the date: (1) such Lot has been conveyed by Declarant; or, (2) the Patio Home thereon is occupied by someone other than a representative of Declarant.

**Section 22. Amendment by Declaration.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

22.1. Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.

22.2. Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or by a majority of the votes cast by the Owners.

22.3. Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly held in accordance with the provisions of the By-Laws.

22.4. Adoption. Any proposed amendment to this Declaration must be approved by not less than seventy-five percent (75%) of the Class A and Class B votes cast. In the event any Lot is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed Amendment in the same manner as an Owner, if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions of the Declaration.

22.5. Special Amendment. No amendment to this Declaration shall be adopted which changes: (1) the applicable share of an Owner's liability for the Common Expenses or the method of determining the same; or (2) the provisions of Section 17 of this Declaration with respect to casualty insurance to be maintained by the Association; or (3) provisions of Section 18 of this Declaration with respect to reconstruction or repair in the event of fire or casualty, or (4) changes any of the provisions of Section 16 of this Declaration with respect to the assessments on any Lot, without in each and any of such circumstances, the unanimous approval of all Owners, all Mortgagees and Declarant.

22.6. Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the Office of the Recorder of Monroe County, Indiana, and such amendment shall not become effective until so recorded.

22.7. Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in the Articles or in the By-Laws until the Applicable Date, Declarant shall have the right acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other person, to amend or supplement this Declaration from time to time; provided, Declarant shall not have the right to adopt a Special Amendment except in accordance with Section 22.5.

**Section 23. Acceptance and Ratification.** All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of Winslow Farm Declaration, this Declaration, the Articles of Incorporation, and the By-Laws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of Winslow Farm Declaration, this Declaration, the Articles of Incorporation, the By-Laws, and rules and regulations, as each may be amended from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Lot or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trust, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the Property in any manner shall be subject to Winslow Farm Declaration, this Declaration, the Articles of Incorporation, the By-Laws, and the rules and regulations applicable thereto as each may be amended from time to time.

**Section 24. Negligence.** Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of the insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Lot or its appurtenances or of the Common Area.

**Section 25. Waiver.** No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by abandonment of his Lot.

**Section 26. Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration. The Articles or the By-Laws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of

this Declaration, the Articles, or the By-Laws, and each shall be enforced to the greatest extent permitted by law.

**Section 27. Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. The singular shall include and refer to the plural and vice versa as appropriate.

**Section 28. Interpretation.** The captions and titles of the various articles, sections, sub-sections, paragraphs and sub-paragraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

**Section 29. The Plat.** The plat of Moss Creek Village at Winslow Farm, Phase I is incorporated into this Declaration by reference and has been filed in the Office of the Recorder of Monroe County, Indiana, as of the 21st day of August, 1995, in Plat Cabinet C, Envelope 150.

IN WITNESS WHEREOF, the undersigned has caused this Restated and Amended Declaration to be executed the day and year first above written.

**Moss Creek Village at Winslow Farm  
Homeowners' Association, Inc.**  
*an Indiana Not-For-Profit Corporation*

By:   
Terry Lamirand

Its: TREASURER

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MONROE     )

Terry Lamirand personally appeared before me, a Notary Public, in and for said County and State on the 30th day of July, 2013, and who for and on behalf of Moss Creek Village at Winslow Farm Homeowners' Association, Inc., acknowledged the execution of the foregoing *Restated and Amended Declaration of Covenants, Conditions and Restrictions of Moss Creek Village at Winslow Farm, Phase I*, and after being duly sworn, stated that the statements contained therein are true.

My Commission Expires:  
10/16/16

Brenda R Lewis  
Notary Public

BRENDA R. LEWIS  
(Name Printed)

Monroe  
County of Residence

**I affirm under penalties of perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law.**

Meg Lewis  
Name



**SECOND AMENDMENT TO THE RESTATED AND AMENDED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS OF  
MOSS CREEK VILLAGE OF WINSLOW FARMS, PHASE I**

THIS SECOND AMENDMENT TO THE RESTATED AND AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF MOSS CREEK OF WINSLOW FARMS, PHASE I (this "Amendment") is made this 25 day of Nov, 2024 by Moss Creek Village of Winslow Farms, Phase I, an Indiana nonprofit corporation (the "Association"), pursuant to the provisions of the Indiana Horizontal Property Act (the "Act") and in accordance with the terms and provisions of the Code of By-Laws of Moss Creek Village of Winslow Farms, Phase I (the "By-Laws"), and the Restated and Amended Declaration of Covenants, Conditions and Restrictions dated January 1, 2015, and recorded on February 4, 2015, as Instrument 2015001550, in the Office of the Recorder of Monroe County, Indiana (the "Declaration"), and the First Amendment to the Restated and Amended Declarations of Covenants, Conditions, and Restrictions dated October 24, 2018, and recorded on February 22, 2019, as Instrument 2019002291, in the Office of the Recorder of Monroe County, Indiana (the "First Amendment to Declaration").

**WITNESSETH**

WHEREAS, pursuant to Section 20 of the Declaration, the Declaration may be amended by the affirmative vote of not less than seventy-five percent (75%) of the votes cast at a meeting duly held for such purpose; and

WHEREAS, pursuant to the Minutes of the Special Meeting of the Members of Moss Creek Village of Winslow Farms, Phase I dated *October 9, 2024*, which are attached hereto and incorporated herein by reference, seventy-five percent (75%) of the votes cast at such meeting voted to amend the Declaration as set forth herein.

NOW, THEREFORE, the Association hereby amends the Declaration as follows:

I. Amendment of Section 1. Section 1 of the Declaration is hereby amended to read as follows:

a. Section 1.12 is replaced to read as follows:

1.12. Patio Home. "Patio Home" means one of the attached single-family residential living units constructed upon a Lot, including the fixtures and equipment installed within the living unit commencing at a point where the utility lines, pipes, wires, conduits, or systems enter the exterior walls of the living unit and the Sewer Lateral serving the Patio Home.

b. Section 1.18 is hereby added to the Declaration, which reads as follows:

1.18. Sewer Lateral. "Sewer Lateral" means the sewer line from the point where the sewer line exits the Patio Home to the point where the sewer lateral connects to the City of Bloomington sewer main. The location of the Sewer Lateral is shown on the Plat. A single Sewer Lateral may serve one or more Patio Homes.

2. Amendment of Section 14. Section 14 of the Declaration is hereby amended to read as follows:

**Section 14. Maintenance, Repairs and Replacements.** Each Owner shall at their expense be responsible for the maintenance, repairs, decoration, and replacements within their own Patio Home except as may otherwise be provided herein. All aspects of the Patio Home shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair of their Patio Home, which if neglected, might adversely affect any home, Common Area or the value of the property. Such maintenance and repairs include but are not limited to internal water lines, plumbing, Sewer Lateral, electric lines, gas lines, appliances, doors, windows, lamps and all other accessories belonging to the Owner and appurtenant to the home. Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Association, as part of the Common Expense.

In addition to the maintenance of the Common Area, the Association shall provide exterior maintenance upon each Lot and Patio Home for only the following: paint, repair, replacement and care of all exterior walls; stairs; exterior doors, and window trim; exterior brick and siding; garage doors; roofs, chimneys, and shingles; and guttering, soffit, fascia, and downspouts. Any glass surfaces, screens, window fixtures, other hardware, porches, decks, and patios, including sunrooms and screened porches shall be the sole responsibility of the Owner.

The Association shall also maintain any trees, shrubs, grass or walks which the Association of Declarant originally planted or installed upon any Lot; any trees, shrubs or landscaping done by an Owner upon the Owner's Lot shall be maintained by the Owner.

If the need for maintenance and repair results from the willful or negligent act of the Owner, their family, guests or invites, and is not covered or paid for by insurance on such Lot, the cost of such maintenance or repair shall be borne by the Owner, and shall be added to and become part of the assessment to which their Lot is subject and be subject to the same method of collection as the Regular Assessment.

The Board of Directors, or their designated agents, shall have the right at reasonable times, and upon reasonable prior notice (except in the case of

emergency in which case no notice is required) to enter into each individual Patio Home for purposes of inspection of the Common Area appurtenant thereto, and replacement, repair and maintenance of the same.

3. Amendment of Section 17. Section 17 of the Declaration is hereby amended and replaced to read as follows:

**Section 17. Insurance.** The Association, as a minimum, shall obtain and carry a “bare wall” policy of property insurance coverage of the original construction and design of the Patio Homes. Such coverage is required to cover the exterior wall and load bearing walls; interior stud walls and framing and stairs; interior perimeter support walls and beams; exterior doors, and window trim; garage doors; roofs, chimneys, and shingles; original porches, decks, and patios (excluding sunrooms and screened porches); guttering, soffit, fascia, and downspouts; and earthquake coverage for the above specified parts of the Patio Homes.

Each Owner shall be solely responsible, at the Owner’s own expense, for homeowner’s liability insurance and for insuring the Owner’s Patio Home, including personal property stored within the Patio Home and elsewhere on the Property. Owners shall maintain coverage for at least, but not limited to, the following: footings; foundations and slabs under flooring; electric, gas, and plumbing services; fireplaces; duct work; insulation; floor coverings; drywall; drywall coverings such as painting, wallpaper, tile, decoration, and trim; light fixtures; appliances; storm doors and interior doors and trim; plumbing fixtures; heating, cooling, filtering units, ceiling and exhaust fans; window fixtures, glass surfaces, and window screens and treatments; cabinets, including but not limited to kitchen and bathroom cabinets, built-in bookcases and TV enclosures; owners furnishings and personal property; garage door openers; sunrooms and screened porches; and earthquake coverage for any item not mentioned. Additionally, Owners are encouraged to maintain utility insurance offered by the utility companies, such as electric, gas, and plumbing lines.

All insurance obtained, whether obtained by the Association or the Owners, including but not limited to insurance on the individual Patio Homes, insurance on improvements in the Common Area and liability insurance, shall provide that the insurance company providing such insurance waives its right of subrogation, if any, against the Owners, the Association and their agents.

The limit of insurance for each Patio Home will be equal to the full replacement cost thereof. Such insurance coverage shall be for the benefit of each Owner, the Homeowner’s Association and the Owner’s Mortgagee (if applicable). In the event of damage or destruction to any Patio Home, the Owner, Mortgagee (if applicable) and Homeowner’s Association shall use such insurance proceeds to repair or restore the damaged property only for the designated portion the party is responsible for insuring.



The Association, acting through its Board of Directors, shall obtain fire and extended coverage insurance insuring all improvements in the Common Area, in an amount equal to full replacement cost thereof. The Association shall also obtain comprehensive public liability insurance in such limits as the Board of Directors shall deem appropriate together with workmen's compensation and other liability insurance if deemed necessary and appropriate by the Board of Directors. Such insurance shall also cover any liability claims of any Member of the Association. The premium for the insurance obtained by the Association shall be paid by the Association as part of the Common Expenses.

4. Effective Date of Amendment. This Amendment shall be effective as of the date this Amendment is recorded in office of the Recorder of Monroe County, Indiana.

5. Application. This Amendment shall apply to all current and future Owners of Lots in Moss Creek Village of Winslow Farms, Phase 1. This Amendment shall be perpetual, run with and bind all of the Real Estate subject to the Declaration and shall inure to the benefit of and be enforceable by the Association.

6. Incorporation. This Amendment shall be incorporated into and made a part of the Declaration, and all provisions of the Declaration not expressly modified or amended hereby shall remain in full force and effect.

7. Amendment Controls. In the event of any conflict between the provisions of this Amendment and the provisions of the Declaration, the By-Laws, or the Rules and Regulations promulgated by the Association, the provisions of this Amendment shall control.

IN WITNESS WHEREOF, the Association has caused this Second Amendment to be executed as of the day and year first above written.

**Moss Creek Village Homeowners' Association, Inc.**

By: Jane Perry  
Jane Perry, President

STATE OF INDIANA        )  
  )  
  )        SS:  
COUNTY OF MONROE    )

Before me, a Notary Public in and for said County and State, personally appeared Moss Creek Village Homeowners' Association, Inc., by its President, Jane Perry, being known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged the execution of the foregoing *First Amendment to the Restated and Amended Bylaws of Moss Creek Village Homeowners' Association, Inc.*, to be her free and voluntary act and deed for the uses and purposes therein expressed, and who, having been duly sworn, stated that any representations therein contained are true.

Witness my hand and Notarial Seal this 25<sup>th</sup> day of November, 2024.

Tamara J. Saltzman  
Notary Public of the State of Indiana

Tamara J. Saltzman  
Printed name



County of Residence

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. /s/ Pamela J. Hensler.

This Instrument prepared by Pamela J. Hensler, Mallor Grodner, LLP, 511 Woodcrest Drive, Bloomington IN 47401.

COPY

513202

234 PAGE 668

Declaration of Covenants, Conditions and Restrictions  
of  
Moss Creek Village at Winslow Farm, Phase I

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS made  
this 21 day of August, 1995, by Wininger/Stolberg Communities LLC.

RECITALS

- (A) Declarant is the sole owner of the fee simple title to the Real Estate; and
- (B) Declarant plans to improve the Real Estate by constructing six (6) Patio Homes upon the Real Estate in Phase I of Moss Creek Village at Winslow Farm.
- (C) Declarant intends to sell the individual Lots and Patio Homes together with the right to use the Common Areas.

NOW, THEREFORE, Declarant declares that Moss Creek Village at Winslow Farm, Phase I and any Additional Phases subjected to the terms of this Declaration shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the covenants and restrictions hereinafter set forth expressly and exclusively for the use and benefit of the Real Estate and of each and every person or entity who now or in the future owns any Patio Home within Moss Creek Village.

**Section 1. Definitions.** The following terms used in this Declaration shall have the following meanings:

1.1. **Additional Real Estate.** "Additional Real Estate" means the real property described on Exhibit "C", which may be added to Moss Creek Village and subjected to this Declaration by Declarant in the future.

1.2. **Applicable Date.** "Applicable Date" means the first to occur of the following events: (i) the date the Class "B" member voluntarily resigns by tendering a written resignation to the resident agent of the Association; or, (ii) the date when Declarant sells all lots in all Phases of Moss Creek Village; or, (iii) December 31, 2005.

1.3. **Association.** "Association" means Moss Creek Village at Winslow Farm Homeowners' Association, Inc., its successors and assigns, an Indiana not-for-profit corporation which is the incorporated association of Owners, more particularly described in Section 10. A copy of the *Articles of Incorporation* for the Association is attached as Exhibit "A".

1.4. **Board of Directors.** "Board of Directors" means the governing body of the Association elected by the Owners in accordance with the By-Laws.

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1.5. **By-Laws.** "By-Laws" means the By-Laws of the Association, providing for the administration and management of the Association, a true copy of which is attached to this Declaration as Exhibit "B" and incorporated herein by reference.

1.6. **Common Area.** "Common Area" means all the area in Moss Creek Village outside the boundaries of any Lot.

1.7. **Common Expenses.** "Common Expenses" means the expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Area and other costs and expenses incurred by the Association for the common benefit of all Owners; provided, however, that Common Expenses shall not include any costs of initial construction of any Patio Home or any expenses assumed or incurred by the Community Association.

1.8. **Community Association.** "Community Association" means Winslow Farm Community Association, Inc., its successors and assigns, an Indiana not-for-profit corporation which is the incorporated Association of all Owners in Winslow Farms.

1.9. **Declarant.** "Declarant" means Winger/Stolberg Communities LLC developer of Moss Creek Village, and any successor or assignee of its interest in all or part of Moss Creek Village or in this Declaration under an instrument or instruments which expressly state that the successor or assignee thereunder shall become the Declarant for purposes of this Declaration.

1.10. **Delinquency Date.** "Delinquency Date" means the date which is ten (10) days after the due date of any Regular or Special Assessment.

1.11. **Lot.** "Lot" means any plot of ground designated as such upon the recorded Plat of Moss Creek Village at Winslow Farm or any part and thing upon which one (1) Patio Home is constructed, is to be constructed or has existed. Whenever used in the Declaration, "Lot" will be deemed to include the Patio Home, if any, located thereon.

1.12. **Mortgagee.** "Mortgagee" means the holder of any recorded first mortgage lien on any Lot.

1.13. **Owner.** "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, which owns the record fee simple title to a Lot; provided that persons or entities owning a single Lot as tenants in common, joint tenants, tenants by the entireties or any form of joint or divided ownership, shall be deemed one Owner for purposes of this Declaration.

1.14. **Patio Home.** "Patio Home" means one of the attached single-family residential living units constructed upon a Lot.

1.15. Plat. "Plat" means the Plat prepared by Smith-Neubecker and Associates of Moss Creek Village at Winslow Farm, Phase I, being on record in the Office of the Recorder of Monroe County, Indiana, as document number \_\_\_\_\_ in Plat Cabinet \_\_\_\_\_, Envelope \_\_\_\_\_. Additional phases of Moss Creek Village, upon recording of the Plat with the Monroe County Recorder's Office, will also be included in such definition.

1.16. Moss Creek Village. "Moss Creek Village" means all phases of Moss Creek Village, as platted.

1.17. Property. "Property" means the Common Area, Patio Homes and all other improvements of every kind and nature whatsoever, now or hereafter located upon the Real Estate and used in connection with the operation, use and enjoyment of Moss Creek Village.

1.18. Phase I Real Estate. "Phase I Real Estate" means the real property described on Exhibit "D", which has been subjected to this Declaration and all of the Property located upon the Real Estate.

1.19. The Winslow Farm Declaration. "The Winslow Farm Declaration" means the Declaration of Covenants, Conditions and Restrictions of Winslow Farm as recorded in the Office of the Recorder of Monroe County, Indiana.

**Section 2. Declaration.** Declarant hereby expressly declares that the Phase I Real Estate shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

**Section 3. Description of Moss Creek Village, Phase I.** Moss Creek Village at Winslow Farm, Phase I, consists of six (6) Lots numbered 11 through 16, inclusive, together with the Common Area shown on the Plat. The size of the Lots are as designated on the Plat. The legal description for each Lot in Moss Creek Village at Winslow Farm, Phase I shall be as follows:

Lot \_\_\_\_\_ in Moss Creek Village at Winslow Farm, Phase I, a subdivision in Monroe County, Indiana, as per Plat thereof recorded August 21, 1995 in Plat Cabinet C, Envelope 150 in the Office of the Recorder of Monroe County, Indiana.

**Section 4. Lots and Easements.** The boundaries of each Lot in Moss Creek Village shall be as shown on the Plat; provided, however, in the event any vertical boundary line of any Patio Home does not coincide with the actual Lot line because of inexactness of construction, settling after construction or for any other reasons, whether from the initial construction or subsequent reconstruction, the boundary lines shall be deemed to be treated for purposes of occupancy, possession, maintenance, use and enjoyment, as in accordance with the

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actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the Owner of each Lot in and to such base line outside the actual boundary line of the Lot.

Each Lot is subject to an access easement as shown on the Plat granted to all Owners of Lots in Moss Creek Village. The access and maintenance easement shall be for the purpose of obtaining access to and enjoying the easement area as an arboretum. No Owner shall construct, plant or do anything that would interfere with the rights of the Association or the other Owners to use the access and maintenance easement without the express written consent of the Association in each instance.

**Section 5. Common Area.** Common Area includes all area within Moss Creek Village, except the Lots, including but not limited to the interior roads, sidewalks, parking areas, entrance signage and ponds. Declarant warrants and guarantees to the Association, for one year from the date Declarant executes the Warranty Deed to the Association transferring the Common Area, that all materials and workmanship are free from material defects and that all improvements in the Common Area have been constructed in substantial compliance with the requirements of applicable government ordinances. This warranty specifically excludes any claims for defects in landscaping materials, paving surfaces or ponds. Upon receipt from any Owner of a written notice specifically identifying the defective condition, Declarant shall, within sixty (60) days thereof, inspect the Common Area and if such inspection discloses material defects in material or workmanship, Declarant will, without cost to the Association, remedy such defects within a reasonable time. Declarant shall not be responsible for any conditions, defects or damage which are the result of ordinary expansion and contraction or caused by acts of God. If no written claim is made as provided herein within one (1) year after the deed is executed by Declarant, all claims against Declarant are expressly waived by the Association and all Owners with respect to the Common Area.

**Section 6. Ownership of Common Area.** The Common Area shall be conveyed to or owned by the Association, and shall be held for the use and enjoyment of the Owners, all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to every Lot, subject to the provisions of this Declaration, including but not limited to the following:

6.1. The right of the Association, upon approval by a written instrument signed by two-thirds of all Class A and B Owners and by two-thirds of all first Mortgagees, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such Common Area purposes and subject to such conditions as may be agreed by the Association.

6.2. The right of the Association to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Section 11.

6.3. The Common Area for each Phase in Moss Creek Village shall be conveyed to or owned by the Association at the time of conveyance of the last Lot in the particular Phase of Moss Creek Village; provided, however, that expenses relating to the maintenance of the Common Area within each Phase are to be included within the Association budget from the time of conveyance of the first Lot in the particular Phase of Moss Creek Village.

**Section 7. Delegation of Use of the Common Area.** Any Owner may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Association, his right of enjoyment, and the use of the Common Area and facilities to members of his family, his tenants or contract purchasers who reside in any Patio Home.

**Section 8. Encroachments and Easements in Common Area.** If by reason of inexactness of construction, settling after construction or for any other reasons, any Common Area encroaches upon any Lot, an easement shall be deemed to exist and run to the Association for the maintenance, use and enjoyment of such Common Area.

Each Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, located in any other Patio Homes or in the Common Area and serving his Patio Home.

**Section 9. Easement for Utilities and Public and Quasi-Public Vehicles.** All public and quasi-public vehicles including but not limited to police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles shall have the right to enter upon the Common Area in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including but not limited to water, sewer, gas, telephone and electricity on the Property, provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines or other utilities, except as initially designed and approved by Declarant on the Plat or as thereafter may be approved by Declarant or by the Board of Directors. By virtue of this easement the electrical and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Property and to affix and maintain electrical and telephone wires, circuits and conduits. All utility pipes, conduits, wires or circuits will be installed underground. In the event any utility furnishing service should request a specific easement by a separate recordable document, Declarant shall have the right to grant such easement on such Property, without conflicting with the terms of this section. The easements granted herein shall in no way affect any other recorded easement on the Property.

An easement is also granted to the Community Association, its officers, agents and employees and to any management company, if any, selected by the Community Association to enter in or to cross over the Common Area to perform its duties of maintenance, repair or replacement of the ponds and entrance signage located within Moss Creek Village.

**Section 10. Association.** In order to provide for the maintenance and repair, replacement, administration, operation and ownership of the Common Area, and to perform such other function as may be designated to it, there is hereby created a not-for-profit corporation which shall be known as Moss Creek Village at Winslow Farm Homeowners' Association, Inc. Each Owner shall automatically be a Member of the Association, but membership shall terminate when such person ceases to be an Owner, and will be transferred to the new Owner; provided, however, any person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a Member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Association. The Association shall have two classes of Members:

10.1. **Class A.** Class A Members shall be all Owners except Declarant and shall be entitled to one vote for each Lot owned. All persons holding an interest in any Lot shall be Members provided, however, each Lot represented shall have only one vote as the Owners of such Lot may determine.

10.2. **Class B.** The Class B Member shall be Declarant and Declarant shall be entitled to ten (10) votes for each Lot owned. The Class B Membership shall cease and terminate upon the Applicable Date.

The initial Board of Directors shall be as designated in the Articles of Incorporation, and such Directors, notwithstanding any provision in this Declaration or the Articles or the By-Laws to the contrary, shall be Directors until the Applicable Date. If there is a vacancy in the initial Board for any reason prior to the Applicable Date every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the initial Board. After the Applicable Date, the Association shall elect a Board of Directors annually in accordance with and as prescribed by the By-Laws. The Members shall be entitled to vote for the election of the Board of Directors in accordance with the procedure outlined in the By-Laws. The Board of Directors shall be the governing body of the Association representing all of the Members and being responsible for the functions and duties of the Association including but not limited to the management, maintenance, repair, replacement and upkeep of the Common Area. The Common Area shall be owned, operated and managed by the Association.

**Section 11. Right of Board of Directors to Adopt Rules and Regulations.** The Board of Directors may promulgate such additional rules and regulations regarding the operation of the Property, including but not limited to the use of the Common Area, as it may deem necessary from time to time. Such rules as are adopted may be amended by vote of a majority of the Board, and the Board shall cause copies of such rules to be delivered and mailed promptly to all Owners.

**Section 12. Real Estate Taxes.** Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed



and taxed to each Lot, but are assessed and taxed on the Real Estate as a whole, without a breakdown for each Lot, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Real Estate assessed as a whole, which shall be the ratio that the square footage in his Lot bears to the total square footage of all the land comprising the Real Estate assessed as a whole; and shall pay his proportionate share of the real estate taxes assessed on any improvements constructed on his Lot. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Association and treated as a Common Expense.

**Section 13. Utilities.** Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered shall be treated as and paid as part of the Common Expense, unless otherwise determined by the Association.

**Section 14. Maintenance, Repairs and Replacements.** Each Owner shall at his expense be responsible for the maintenance, repairs, decoration and replacement within his own Patio Home except as may otherwise be provided herein. All fixtures and equipment installed within the Patio Home commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a Patio Home shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair in his Patio Home, which if neglected, might adversely affect any Patio Home, Common Area or the value of the Property. Such maintenance and repairs include but are not limited to internal water lines, plumbing, electric lines, gas lines, appliances, doors, windows, lamps, and all other accessories belonging to the Owner and appurtenant to the Patio Home. Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Association, as a part of the Common Expense.

In addition to the maintenance of the Common Area, the Association shall provide exterior maintenance upon each Lot and Patio Home for the following: paint, repair, replacement and care of all exterior doors, roofs, gutters, downspouts, exterior building surfaces, and other exterior improvement excluding, however, any glass surfaces, screens, window fixtures, other hardware and decks which shall be the sole responsibility of the Owner.

The cost of maintaining, servicing, and operating any sewer lateral that serves Patio Homes in Moss Creek Village from the point where the sewer line exits the Patio Home to the point where the sewer lateral connects to the City of Bloomington sewer main shall be a Common Expense borne by the Association. The location of the sewer laterals are shown on the Plat. The Association agrees to indemnify and hold the City of Bloomington, Indiana harmless from any claim for injury or damage arising as a result of the Association's failure to properly maintain, service or operate any single sewer lateral that serves two (2) Patio Homes. Further, each Owner hereby waives its claim, if any, that may arise from the Association's negligent maintenance, service or operation of such sewer lateral.

The Association shall also maintain in accordance with good horticultural practices the shrubs, trees, flowers and plants which the Developer or the Association planted in the area of each Lot subject to the access and maintenance easement shown on the Plat, which area shall be used as an arboretum. If, in the judgment of the Association, any shrub, tree, flower or plant needs replacement, the Association shall, at its sole expense, replace the shrub, tree, flower or plant.

The Association shall also maintain any trees, shrubs, grass or walks which the Association or Declarant originally planted or installed upon any Lot; any trees, shrubs or landscaping done by an Owner upon the Owner's Lot shall be maintained by the Owner.

If the need for maintenance and repair results from the willful or negligent act of the Owner, his family, guests or invitees, and is not covered or paid for by insurance on such Lot, the cost of such maintenance or repair shall be borne by the Owner, and shall be added to and become a part of the assessment to which his Lot is subject and be subject to the same method of collection as the Regular Assessment.

The Board of Directors, or their designated agents, shall have the right at reasonable times, and upon reasonable prior notice (except in cases of emergency in which case no notice will be required) to enter into each individual Patio Home for purposes of inspection of the Common Area appurtenant thereto, and replacement, repair and maintenance of the same.

**Section 15. Alterations, Additions and Improvements.** Without the prior written approval of the Board of Directors, no Owner may make any alterations, additions, improvements, repairs, change of colors, excavation, changes in grade or other work which in any way alters the exterior of any Lot or Patio Home located thereon from its natural or improved state existing on the date such Lot was first conveyed by Declarant to the Owner except as otherwise expressly provided in this Declaration.

**Section 16. Assessments.** Regular and Special Assessments shall be determined and collected as follows:

16.1. **Annual Accounting.** Annually after the close of each calendar year of the Association and prior to the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared and furnished each Owner a financial statement, which statement shall show all receipts and expenses received, incurred or paid during the preceding calendar year.

16.2. **Proposed Annual Budget.** Annually on or before the date for notice of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing calendar year estimating the total amount of the Common Expenses for the ensuing year and furnish a copy of such proposed budget to each Owner prior to the annual meeting. The proposed annual budget shall be submitted to the Owners at the annual meeting of the Association for adoption, and if so adopted

shall be the basis for the Regular Assessments for the ensuing calendar year. At the annual meeting of the Owners, the proposed budget may be approved in whole or in part, or may be amended in whole or in part by a majority of the Owners present or represented at the meeting (provided a quorum is present); provided, however, in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owner shall not constitute a waiver or release of the Owner to pay the Common Expenses.

16.3. Regular Assessments. The annual budget as adopted shall, based on the estimated cash requirement for the Common Expenses in the ensuing year as set forth in said budget, contain a proposed assessment against each Lot based on the total amount of said budget divided by the total number of Lots (herein called the "Regular Assessment"). The Regular Assessment against each Patio Home shall be paid in twelve (12) monthly installments on the first day of each month beginning in January following adoption of the budget. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors as directed by the Board of Directors; provided, however, that any Owner may elect to pay Regular Assessments in advance. The Regular Assessment for each year shall become a lien on each separate Lot and Patio Home as of the date of the adoption of the annual budget.

16.4. Special Assessments. In addition to the Regular Assessments authorized above, the Association may levy such Special Assessments as may be necessary for the purpose of defraying, in whole or in part: (1) the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto; and, (2) the expense of any other contingencies or events not provided for in the annual budget or the reserves and working capital of the Association; provided that no Special Assessments shall be levied without the assent of a majority of the Owners at a meeting duly called for this purpose. Each Owner shall pay the Association a Special Assessment based on the total sum approved to meet the costs and expenses as heretofore provided divided by the total number of Lots in Moss Creek Village. The Association may, in connection with the levy of any Special Assessment, specify that the same shall be payable in installments and specify the due dates thereof.

16.5. Adjustments. In the event that the approved budget and Regular Assessments plus the reserves and working capital of the Association provide insufficient to meet the Association's actual expenses in any year, such deficiencies may be corrected through one or more Special Assessments. In the event the approved and Regular Assessments exceed actual expenses in any year, such surplus shall be retained and used to offset expenses in the next year(s) or returned to the Owners proportionately as the Board of Directors shall elect.

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16.6. Temporary Budget and Assessments. If for any reason an annual budget and the Regular Assessments for any year have not been determined as of January 1 of any such year, the budget and Regular Assessments in effect during the preceding year shall continue in effect until such time as the annual budget and Regular Assessments are determined in accordance with the Declaration and the By-Laws; provided, however, that said preceding budget and Regular Assessments may be increased by up to fifteen percent (15%) as the Board of Directors, by majority vote, may deem necessary in said temporary budget and Regular Assessments.

16.7. Reserve Funds. The Association shall be obligated to establish a reserve fund for the repair of the Common Area based upon good faith estimates of the useful life and replacement cost of such Common Area made or obtained by the Association. The reserve fund shall be funded through the payments by the Owners of Regular Assessments and not by an extraordinary or Special Assessment. Extraordinary expenditures not originally included in the annual estimate that become necessary during the year shall be charged first against the reserve fund so established before any Special Assessment is made or levied therefor. All amounts held by the Association pursuant to this Section 16.7 shall be maintained in a federally-insured, account and any interest thereon shall be added to and deemed a part of such fund.

16.8. Status of Funds Collected by Association. All funds collected pursuant to this Section 16 shall be held and expended by the Association solely for the purposes designated herein, and, except for such adjustments as may be required to reflect delinquent or prepaid Regular or Special Assessments, shall be deemed to be held for the use, benefit and account of the Owners for the payment of Common Expenses.

16.9. Accounting Practices of the Association. The annual budget, the Regular Assessment and all sums assessed by the Association shall be established by using generally accepted accounting principles. The annual budget and the Regular Assessment shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area and of Patio Homes to the extent such capital expenditures and replacement and repair is the obligation of the Association, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Area. Such replacement reserve fund for capital expenditures and repair of the Common Area shall be maintained by the Association in a separate, federally insured interest-bearing account or accounts selected from time to time by the Board of Directors.

16.10. Community Assessments. Any Regular Assessment or Special Assessment levied by the Community Association shall be in addition to the Regular Assessments and Special Assessments provided for in this Section 16.

16.11. **Collection of Assessments.** Each Assessment shall be due and payable on the due date thereof as specified in this Declaration or in the By-Laws, or if not so specified, then on any due date(s) determined by the Board of Directors. Any Regular or Special Assessment which is not paid in full by the Delinquency Date shall be deemed delinquent without further notice or demand to the defaulting Owner, and shall bear interest on the unpaid balance thereof from the Delinquency Date until fully paid, at a rate of interest equal to eighteen percent (18%) per annum. In the event that any costs or expenses, including attorney's fees, are incurred by or on behalf of the Association with respect to the recovery or collection of any delinquent Assessment, all such costs and fees shall be due and payable immediately by such delinquent Owner and shall bear interest from the date incurred until paid in full, at a rate of interest equal to eighteen percent (18%) per annum. All interest and all costs and expenses payable hereunder with respect to a delinquent Assessment shall be added to and deemed a part of such delinquent Assessment and shall constitute a lien on the delinquent Owner's Lot and Patio Home as of the date on which such delinquent Assessment first became a lien. In the event that any Assessment is not fully paid on or before the Delinquency Date, the Association shall be entitled to accelerate and declare due and payable in full all installments of Assessments due for the calendar year in which such delinquency occurs, and to enforce payment of the same by foreclosure of said lien and/or other appropriate legal proceedings in accordance with the laws of the State of Indiana. The Owner and any occupant of the Patio Home shall be jointly and severally liable for the payment to the Association of reasonable rental for such Patio Home and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Patio Home and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board of Directors may at its option, bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same.

16.12. **Subordination of Assessment Lien to Mortgage.** Notwithstanding anything contained in this Declaration, the Articles of Incorporation of the Association or the By-Laws, any sale or transfer of a Lot or Patio Homes to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior Owner from personal liability therefor.

**Section 17. Insurance.** Each Patio Home in Moss Creek Village will be insured with the same insurance company chosen by the Board of Directors of the Association. The limit of insurance for each Patio Home will be equal to the full replacement cost thereof and each owner will be responsible for the premium for their individual Patio Home. Such insurance coverage shall be for the benefit of each Owner, the Homeowner's Association and the Owner's

Mortgagee (if applicable). In the event of damage or destruction to any Patio Home, the Owner, Mortgagee (if applicable) and Homeowner's Association shall use such insurance proceeds to repair or restore the damaged property. If for any reason an Owner does not pay the premium allocated to their Home, the Association will add such cost to the Owner's Assessment, which will become immediately due and payable.

The Association, acting through its Board of Directors, shall obtain fire and extended coverage insurance insuring all improvements in the Common Area, in an amount equal to the full replacement cost thereof. The Association shall also obtain comprehensive public liability insurance in such limits as the Board of Directors shall deem appropriate together with workmen's compensation and other liability insurance if deemed necessary and appropriate by the Board of Directors. Such insurance shall also cover any liability claims of any Member of the Association. The premium for the insurance obtained by the Association shall be paid by the Association as part of the Common Expenses.

Each Owner shall have the right to purchase at his own expense any additional insurance he may deem necessary, and each Owner shall be solely responsible for homeowner's liability insurance and for the insurance on the contents of his Patio Home and his personal property stored elsewhere on the Property. All insurance obtained, whether obtained by the Association or the Owners, including but not limited to insurance on the individual Patio Homes, insurance on improvements in the Common Area and liability insurance, shall provide that the insurance company providing such insurance waives its right of subrogation, if any, against the Owners, the Association and their agents.

**Section 18. Casualty and Restoration.** In the event of damage or destruction of any Patio Home by fire or other casualty, the Owner thereof shall cause such Patio Home to be promptly repaired and restored. The proceeds of insurance carried for the benefit of the Owner and Mortgagee for such purpose shall be applied to the cost of such restoration. If the insurance proceeds are inadequate to cover the costs of reconstruction or if there are no proceeds, the Owners of the Patio Homes directly affected by the damage shall pay the cost for restoring the Patio Home. A Patio Home shall be deemed directly affected if and only if a part of such Patio Home, including but not limited to, any party wall of such Patio Home, is damaged or destroyed. If any Owner fails or refuses to reconstruct his Patio Home when required, the Association may pursue whatever legal means are available to cause such restoration, including but not limited to the Association completing the restoration and paying the cost thereof, with the cost attributable to the Owner or Owners who refuse or fail to make the restoration when required becoming a lien on such defaulting Owner's Lot and subject to foreclosure in the same manner as provided for Regular Assessments.

The restoration referred to in this Section 18 shall include the construction costs rebuilding the Patio Homes in the same condition as they existed immediately prior to the destruction or damage and with the same type of architecture. Notwithstanding any other provisions in this Declaration, all Patio Homes which are destroyed or damaged shall be restored pursuant to the provisions of this Section 18 of this Declaration, unless a majority vote of the

Members of the Association decide that such restoration is not necessary, and all improvements in the Common Area which are damaged or destroyed shall be restored by the Association unless two-thirds of the Class A and B Members of the Association and two-thirds of all first Mortgagees decide not to make such restoration or to make such restoration in a different manner.

In the event the Association has insurance proceeds which are to be used for the benefit of the Owners, no distribution of such insurance proceeds shall be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event, any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Area.

In the event of damage to or destruction of any of the Common Area due to fire or other casualty or disaster and the insurance proceeds, if any, received by the Association as a result of such fire or other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged and destroyed (or the cost thereof in excess of insurance proceeds received, if any) shall be paid by the Association through a Special Assessment of the Owners with each Owner being assessed an equal amount.

**Section 19. Covenants and Restrictions.** The following covenants and restrictions on the use and enjoyment of the Lots, Patio Homes, Common Area and Property are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, by the Association, its successors or assigns. Owners and the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation:

19.1. Except for the initial construction of Patio Homes, no additional buildings shall be erected or located on the Real Estate other than on the Lots or as otherwise shown on the Plat except as originally constructed by Declarant or as approved in writing by the Board of Directors.

19.2. Nothing shall be done or kept in any Patio Home or in the Common Area which will cause an increase in the rate of insurance on any other Patio Home or the contents thereof. No Owner shall permit anything to be done or kept in his Patio Home or in the Common Area which will result in the cancellation of insurance on any other Patio Home or contents thereof, or which would be in violation of any law or ordinance.

19.3. No Owner shall cause or permit anything to be hung or displayed on the outside of the windows, or placed on the outside walls of his Patio Home and no sign, awning, canopy, shutter or radio or television antennae, or other attachment or things shall be affixed to or placed upon the exterior walls or roofs, or on any parts of any Patio Home without the prior written consent of the Board of Directors.

19.4. All Lots and the Common Area shall be kept free and clear of rubbish, debris, and other unsightly materials, except in those areas designated for the temporary storage thereof.

19.5. All Owners and members of their families, guests or invitees, and all occupants of any Patio Home or any other persons entitled to use the same and to use and enjoy the Common Area or any part thereof shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board of Directors governing the operation, use and enjoyment of the Common Area.

19.6. No Owner shall be allowed to plant trees, landscape or do any gardening in the Common Area except with express written permission from the Board of Directors.

19.7. No Owner shall erect or permit the erection of any outdoor basketball goal, recreational equipment or other structure, whether permanently installed or on a portable base, anywhere in the Common Area or on Owner's Lot.

19.8. No outdoor satellite dishes, radio or television antennae or other electronic receivers shall be installed or allowed to remain anywhere on any Lot or in any Common Area. RCA DSS 19" systems and similarly sized electronic receivers are allowed in the Project if all the system's components are properly located, screened and landscaped in order to conceal them from public view in a manner determined acceptable by Declarant, in Declarant's sole discretion. Following the Applicable Date, the determination as to the location, screening and landscaping for such components shall be determined by the Board of Directors, in the Board of Directors' sole discretion.

19.9. All Lots, Patio Homes and Property are subject to the covenants, restrictions and easements of The Winslow Farm Declaration.

**Section 20. Notice to Association.** Any Owner who places a first mortgage lien upon his Lot or the Mortgagee shall notify the secretary of the Association thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws, or otherwise, shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in the time provided. Unless notification of any such mortgage and the name and address of the Mortgagee are furnished to the secretary either by the Owner or the Mortgagee, no notice to any Mortgagee as may be



otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage or otherwise.

The Association shall upon request of the Mortgagee who has furnished the Association with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

**Section 21. Annexation of Additional Phases.** In addition to the Phase I Real Estate, Declarant is the fee simple owner of the Additional Real Estate located contiguous to the Real Estate.

At any time, Declarant without the consent of the Owners may, but is not obligated to, develop the Additional Real Estate or any part thereof, in substantially the same manner as Moss Creek Village at Winslow Farm, Phase I and file one or more Supplemental Declarations and Plats for such Additional Real Estate or part thereof as it desires and convey the Common Area thereof to Moss Creek Village at Winslow Farm Homeowners' Association, Inc.

In the event the Additional Real Estate or any part of it is platted in a manner similar to Moss Creek Village at Winslow Farm, Phase I, the Owners of such Lots in the Real Estate or parts thereof, shall have the same rights and obligations as the Owners herein, and the Association shall have the same jurisdiction and authority over such Additional Real Estate or parts thereof as its authority and jurisdiction herein.

In the event Declarant decides not to develop or plat the Additional Real Estate or any part of it in a manner similar to Moss Creek Village at Winslow Farm, Phase I, Declarant shall file a Declaration stating that the Additional Real Estate or any part thereof shall not be developed as contemplated herein.

Regardless of the method of development of the Additional Real Estate, and whether or not all or any part of the Additional Real Estate comes within the jurisdiction of the Association, Declarant reserves unto itself, its successors and assigns, for the use and benefit of that part of the Additional Real Estate not coming within the jurisdiction of the Association the right and easement to enter upon the streets and Common Areas of Moss Creek Village at Winslow Farm, Phase I to provide ingress and egress to the Additional Real Estate.

Declarant hereby grants to the Owners in Moss Creek Village at Winslow Farm, Phase I the right and easement to enter upon any improved streets and roadways that may exist in the Additional Real Estate to provide ingress and egress to Moss Creek Village at Winslow Farm, Phase I as may be necessary.

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It is the purpose and intent of the easements herein granted and reserved, to provide free and unrestricted use and access across the roadways and streets of the Phase I Real Estate and Additional Real Estate for the Owners of the Lots and Additional Real Estate, their guests, invitees, and all public and quasi public vehicles, including but not limited to, police, fire and emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles.

The assessment which the Owner of each Lot in the Additional Real Estate or part thereof, if within the jurisdiction of the Association, shall be obligated to pay shall be equal to that paid by any Owner herein and shall commence on the date of conveyance of such Lot by Declarant. No assessment on any Lot in the Additional Real Estate shall be due until the earlier of the date: (1) such Lot has been conveyed by Declarant; or, (2) the Patio Home thereon is occupied by someone other than a representative of Declarant.

**Section 22. Amendment of Declaration.** Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

22.1. **Notice.** Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.

22.2. **Resolution.** A resolution to adopt a proposed amendment may be proposed by the Board of Directors or by a majority of the votes cast by the Owners.

22.3. **Meeting.** The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly held in accordance with the provisions of the By-Laws.

22.4. **Adoption.** Any proposed amendment to this Declaration must be approved by not less than seventy-five percent (75%) of the Class A and Class B votes cast. In the event any Lot is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed Amendment in the same manner as an Owner, if the Mortgagee has given prior notice its mortgage interest to the Board of Directors in accordance with the provisions of the Declaration.

22.5. **Special Amendment.** Except for the annexation of additional phases of Moss Creek Village, no amendment to this Declaration shall be adopted which changes: (1) the applicable share of an Owner's liability for the Common Expenses or the method of determining the same; or (2) the provisions of Section 17 of this Declaration with respect to casualty insurance to be maintained by the Association; or (3) provisions of Section 18 of this Declaration with respect to reconstruction or repair in the event of fire or casualty, or (4) changes any of the provisions of Section 16 of this Declaration with respect to the assessments on any Lot, without in each and any of such circumstances, the unanimous approval of all Owners, all Mortgagees and Declarant.

22.6. **Recording.** Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the Office of the Recorder of Monroe County, Indiana, and such amendment shall not become effective until so recorded.

22.7. **Amendments by Declarant Only.** Notwithstanding the foregoing or anything elsewhere contained herein or in the Articles or in the By-Laws until the Applicable Date, Declarant shall have the right acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other person, to amend or supplement this Declaration from time to time; provided, Declarant shall not have the right to adopt a Special Amendment except in accordance with Section 22.5:

**Section 23. Acceptance and Ratification.** All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of Winslow Farm Declaration, this Declaration, the Articles of Incorporation, and the By-Laws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of Winslow Farm Declaration, this Declaration, the Articles of Incorporation, the By-Laws, and rules and regulations; as each may be amended from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Lot or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trust, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the Property in any manner shall be subject to Winslow Farm Declaration, this Declaration, the Articles of Incorporation, the By-Laws, and the rules and regulations applicable thereto as each may be amended from time to time.

**Section 24. Negligence.** Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees to the extent that such expense is not covered by the proceeds of the insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Lot or its appurtenances or of the Common Area.

**Section 25. Waiver.** No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by abandonment of his Lot.

**Section 26. Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws, shall not impair

BOOK 234 PAGE 685

or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the By-Laws, and each shall be enforced to the greatest extent permitted by law.

**Section 27. Pronouns.** Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to an include all genders. The singular shall include and refer to the plural and vice versa as appropriate.

**Section 28. Interpretation.** The captions and titles of the various articles, sections, sub-sections, paragraphs and sub-paragraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

**Section 29. The Plat.** The plat of Moss Creek Village at Winslow Farm, Phase I is incorporated into this Declaration by reference and has been filed in the Office of the Recorder of Monroe County, Indiana, as of the 21 day of August, 1995, in Plat Cabinet C, Envelope 150.

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

Winger/Stolberg Communities LLC  
an Indiana limited liability company

By: H. Timothy Winger, Sr.  
H. Timothy Winger, Sr.  
Member

By: Timothy H. Winger, Jr.  
Timothy H. Winger, Jr.  
Member

By: Eric C. Stolberg  
Eric C. Stolberg  
Member

By: WININGER/STOLBERG HC, INC.

By: H. Timothy Winger, Sr.  
H. Timothy Winger, Sr.  
President

Attest: Timothy H. Winger, Jr.  
Timothy H. Winger, Jr.  
Secretary

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MONROE )

§307 234 IAC 686

H. Timothy Winger, Sr., Timothy H. Winger, Jr. and Eric C. Stolberg, members of Winger/Stolberg Communities LLC personally appeared before me, a Notary Public, in and for said County and State on the 21 day of August, 1995, and who for and on behalf of Winger/Stolberg Communities LLC acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of Moss Creek Village at Winslow Farm, Phase I, and after being duly sworn, stated that the statements contained therein are true.

My Commission Expires:

9-6-98

Bernadette C. Melski  
Notary Public

BERNADETTE C. MELSKI  
(Name Printed)

Monroe  
County of Residence

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MONROE )

H. Timothy Winger, Sr. and Timothy H. Winger, Jr., the President and Secretary of Winger/Stolberg HC, Inc., a member of Winger/Stolberg Communities LLC, personally appeared before me, a Notary Public, in and for said County and State on the 21 day of August, 1995, and who for and on behalf of Winger/Stolberg HC, Inc. acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of Moss Creek Village at Winslow Farm, Phase I, and after being duly sworn, stated that the statements contained therein are true.

My Commission Expires:

9-6-98

Bernadette C. Melski  
Notary Public

BERNADETTE C. MELSKI  
(Name Printed)

Monroe  
County of Residence

This Instrument Prepared By: James F. Bohrer, MALLOR CLENDENING  
GRODNER & BOHRER, 511 Woodcrest Drive, P. O. Box 5787, Bloomington, Indiana  
47407-5787 (812) 336-0200. bm/090795/95030/MossVill.CCR

BOOK 234 PAGE 687

**EXHIBIT A**

**Articles of Incorporation for Homeowners Association**

STATE OF INDIANA  
OFFICE OF THE SECRETARY OF STATE

CERTIFICATE OF INCORPORATION

§301. 234 688

OF

MOSS CREEK VILLAGE HOMEOWNERS' ASSOCIATION, INC.

I, SUE ANNE GILROY, Secretary of State of Indiana, hereby certify that Articles of Incorporation of the above corporation have been presented to me at my office accompanied by the fees prescribed by law; that I have found such Articles conform to law; all as prescribed by the provisions of the Indiana Nonprofit Corporation Act of 1991, as amended.

NOW, THEREFORE, I hereby issue to such corporation this Certificate of Incorporation, and further certify that its corporate existence will begin February 20, 1995.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this Twentieth day of February, 1995

Sue Anne Gilroy  
SUE ANNE GILROY, Secretary of State

By Margaret Williams  
Deputy



234-689

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APPROVED  
AND  
FILED  
NO. SECRETARY OF STATE

**ARTICLES OF INCORPORATION  
OF**

**MOSS CREEK VILLAGE HOMEOWNERS' ASSOCIATION, INC.**

The undersigned incorporator, desiring to form a corporation (hereinafter referred to as the "Corporation") pursuant to the provisions of the Indiana Nonprofit Corporation Act of 1991, as amended (hereinafter referred to as the "Act"), executes the following Articles of Incorporation.

**ARTICLE ONE**

**Name**

The name of the Corporation is "Moss Creek Village Homeowners' Association, Inc."

**ARTICLE TWO**

**Purposes and Powers**

**Section 2.1 Type of Corporation.** This is a mutual benefit corporation.

**Section 2.2 Purposes.** The purposes for which the Corporation is formed are:

2.2.1 For the acquisition, construction, management, maintenance, and care of "association property," as defined in Section 528(c) of the Internal Revenue Code of 1986, as amended ("Internal Revenue Code"), which association property includes, but is not limited to, the Common Area and the Limited Common Area within that certain tract of property described in the Declaration of Covenants, Conditions and Restrictions of Moss Creek Village at Winslow Farm recorded in the Office of the Recorder of Monroe County, Indiana ("Declaration")

2.2.2 Solely in furtherance of the aforesaid purposes, to transact any and all lawful business for which corporations may be incorporated under the Act, provided



such business is not inconsistent with the Corporation being organized and operated exclusively for the purposes indicated herein.

**Section 2.3 Non-Profit Purposes**

2.3.1 The Corporation is organized and operated exclusively for the purpose of being a non-profit "homeowners association," as defined in Section 528(c) of the Internal Revenue Code, or corresponding provision of any subsequent Federal tax laws, and its activities shall be conducted in such a manner that no part of its net earnings shall inure to the benefit of any member, director, or officer or other private person, except that the Corporation shall be authorized and empowered to make payments and distributions in furtherance of the purposes set forth in Section 2.1

2.3.2 Notwithstanding any other provision of these Articles of Incorporation, the Corporation shall not carry on any activities not permitted to be carried on by a corporation which qualifies for the exemption from Federal income tax with respect to its exempt function income under Section 528(c) of the Internal Revenue Code, or corresponding provisions of any subsequent Federal tax laws.

**Section 2.4 Powers.** Subject to any limitation or restriction imposed by the Act, any other law, or any other provision of these Articles of Incorporation, the Corporation shall have the power:

2.4.1 To exercise all of the powers and privileges and to perform the duties and obligations of the Corporation as set forth in the Declaration, as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;

2.4.2 To fix, levy, collect and enforce payment of, by any lawful means, all

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charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incidental to the conduct of the business of the Corporation, including all licenses, taxes or governmental charges levied or imposed against the property of the Corporation;

2.4.3 To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for the public use or otherwise dispose of real or personal property which is titled in the name of the Corporation in connection with the affairs of the Corporation;

2.4.4 To have, exercise and enjoy in furtherance of the purposes hereinbefore set forth any and all powers, rights and privileges granted to a corporation by the Act, as now existing or hereafter amended, and by the common law.

#### Section 2.5 Limitation on Powers

2.5.1 The Corporation shall not issue capital stock.

2.5.2 The Corporation must receive sixty percent (60%) or more of its gross income from membership dues, fees or assessments from the Owners of Patio Homes.

2.5.3 The Corporation must make ninety percent (90%) or more of its expenditures for the acquisition, construction, management, maintenance, and care of Corporation property.

2.5.4 Upon dissolution of the Corporation, no member, director, officer, or any private individual will be entitled to share in the distribution of the Corporation's assets. Upon dissolution, the Board of Directors shall, after paying or making provision for the

payment of all the liabilities of the Corporation, dispose of all the assets of the Corporation exclusively for the purposes of the Corporation as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by a Judge of the Circuit Court of Monroe County, Indiana, exclusively for such purposes, or to such organization(s), as said Court shall determine, which are organized and operated exclusively for such purposes.

### ARTICLE THREE

#### Term of Existence

The Corporation shall have perpetual existence.

### ARTICLE FOUR

#### Resident Agent and Principal Office

Section 4.1 Resident Agent. The name and post office address of the resident agent of the Corporation are: James F. Bohrer, Mallor, Clendening, Grodner & Bohrer, 511 Woodcrest Drive, P.O. Box 5787, Bloomington, Indiana 47407.

Section 4.2 Principal Office. The post office address of the principal office of the Corporation is 501 Woodcrest Drive, Bloomington, Indiana 47401.

### ARTICLE FIVE

#### Membership

Section 5.1 Classes. The classes of Members are as follows:

5.1.1 Class "A" Members. Every person or entity, except Declarant who is an Owner in accordance with the definition of Owner in the Declaration shall be a Class "A" Member of the Corporation.

5.1.2 Class "B" Members. Class "B" Members shall be the Declarant. The Class "B" Membership shall cease and be converted to a Class "A" Membership if Declarant still owns a Lot at the Applicable Date as defined in Section 1.2 of the Declaration.

Section 5.2 Rights, Preferences, Limitations, and Restrictions of Classes. No rights, preferences, limitations or restrictions on the classes of membership shall exist other than those specified herein, in the Bylaws of the Corporation or by law.

Section 5.3 Voting Rights of Owners. Each Owner in good standing shall be entitled to voting rights as follows:

5.3.1 Number of Votes. Class "A" Members shall be entitled to one (1) vote for each Lot owned. Class "B" Members shall be entitled to ten (10) votes for each Lot owned. After all Members present (in person or by proxy) have cast their votes, the total number of votes for or against any matter shall then be divided either by the total number of votes cast to determine the respective proportions of Members who support or oppose such matter, or by the number of Members which are present or represented at such meeting to determine the respective proportions of Members present or represented at such meeting who support or oppose such matter.

5.3.2 Multiple Owners. When the Owner of a Lot constitutes more than one person or entity, or is a partnership, there shall be only one voting representative entitled to cast the vote allocable to that Lot. At the time of acquisition of title to a Lot by a multiple Owner or a partnership, those persons constituting such Owner or the partners shall file with the Secretary of the Corporation an irrevocable proxy appointing one of such persons or partners as

the voting representative for such Lot, which shall remain in effect until such appointed representative relinquishes such appointment in writing, becomes incompetent, dies, or such appointment is otherwise rescinded by order of a court of competent jurisdiction. Such appointed voting representative may grant a proxy to another to vote in his place at a particular meeting(s) pursuant to paragraph 5.3.4 of this Section 5.3, which shall constitute relinquishment of his right to act as voting representative for the Lot at such meeting(s).

5.3.3 Voting by Corporation or Trust. Where a corporation or trust is an Owner of a Lot or is otherwise entitled to vote, the trustees may cast the vote on behalf of the trust, and the agent or other representative of the corporation duly empowered by the Board of Directors of such corporation shall cast the vote to which the corporation is entitled.

5.3.4 Proxy. An Owner may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Owner shall duly designate his attorney-in-fact in a writing, delivered to the Corporation prior to the commencement of the meeting.

5.3.5 Quorum. Except where otherwise expressly provided in the Declaration, these Articles, the Bylaws, or the Act, the presence of a majority of the Owners or their duly authorized representatives shall constitute a quorum at all meetings. The terms "majority of Owners" and "majority of the vote," as used in these Articles, shall mean, unless otherwise expressly indicated, more than fifty percent (50%) of the total vote of all Owners as determined by the

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applicable provisions set forth in the Declaration, and shall not mean a majority of the persons or votes present or represented at such meeting.

5.3.6 Owner. The term "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to one Lot. Persons or entities owning a single Lot as tenants in common, joint tenants, or tenants by the entireties shall be deemed one Owner. Owners holding title to multiple Lots will be entitled to one vote for each Lot owned.

## ARTICLE SIX

### Board of Directors

Section 6.1 Number. The initial Board of Directors shall consist of three (3) directors. The exact number of directors shall be specified from time to time by the Bylaws of the Corporation. The minimum number of directors so specified shall be three (3) and the maximum number shall be five (5). Whenever the Bylaws do not specify the number of directors, the number shall be three (3).

Section 6.2 Qualification. Each director shall have such qualifications as may be specified from time to time in the Bylaws of the Corporation or required by law.

Section 6.3 Initial Board of Directors. The names and addresses of the initial Board of Directors of the Corporation are:

<u>Name</u>	<u>Address</u>
H. Timothy Winger, Sr.	501 Woodscrest Drive Bloomington, IN 47401
Eric C. Stolberg	501 Woodscrest Drive Bloomington, IN 47401
Timothy H. Winger, Jr.	501 Woodscrest Drive Bloomington, IN 47401

**ARTICLE SEVEN**

Name and Address of Incorporator

The name and address of the incorporator of the Corporation is:

<u>Name</u>	<u>Address</u>
Eric C. Stolberg	501 Woodscrest Drive Bloomington, IN 47401

**ARTICLE EIGHT**

Statement of Property

Upon its incorporation, the Corporation is assuming control of rights in real property located in Winslow Farm and certain cash and other assets in connection therewith, valued at more than \$1,000.00.

**ARTICLE NINE**

Provisions for Regulation and Conduct of  
the Affairs of the Corporation

Section 9.1 Directors: Amendment of Articles. Other provisions, consistent with the laws of the State of Indiana, for the regulation and conduct of the affairs of the Corporation, and

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creating, defining, limiting or regulating the powers of the Corporation, the directors or the Owners are as follows:

9.1.1 The affairs of the Corporation shall be managed initially by the Board of three (3) directors set forth in Article Six, Section 6.3, above, who shall serve until the later of: (1) the date on which control of the Corporation is turned over to the Owners, as provided in the Declaration; or, (2) the date when successor directors have been elected and qualified.

9.1.2 Prior to the Applicable Date, as defined in the Declaration, these Articles may be amended by sixty-six and two-thirds percent (66 2/3%) of the vote of all Class "B" Members. Thereafter, amendment of these Articles shall require the assent of not less than sixty-six and two-thirds percent (66 2/3%) of the vote of all Class "A" Members and sixty-six and two-thirds percent (66 2/3%) of the vote of all Class "B" Members.

**Section 9.2 Place of Meeting.** Meetings of the Owners and of the Board of Directors of the Corporation shall be held at such places within the State of Indiana, as shall be specified in the respective calls and notices or waivers of notice of such meetings given in accordance with the Bylaws of the Corporation.

**Section 9.3 Indemnification.**

9.3.1 The Corporation shall indemnify any person who is or was a director, officer, or employee of the Corporation, or is or was serving as a director, officer, or employee of another corporation, partnership, or other enterprise at the request of the Corporation, against expenses (including attorneys'



fees), judgments, fines, penalties, and amounts paid in settlement reasonably incurred by such person, to the fullest extent now or hereafter permitted by law, in connection with or resulting from any claim, action, suit, or proceeding (whether actual or threatened, civil, criminal, administrative or investigative, or in connection with an appeal relating thereto), in which such person may be involved as a party or otherwise by reason of being or having been a director, officer, or employee for the Corporation or of such other organization; provided such person acted in good faith and in a manner that he reasonably believed to be in, or not opposed to, the best interests of the Corporation and, with respect to any criminal action or proceeding, in a manner which he had no reasonable cause to believe was unlawful. The termination of any claim, action, suit, or proceeding by judgment, order, settlement (whether with or without court approval), conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believes to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action, suit, or proceeding, in a manner which he had no reasonable cause to believe was unlawful.

9.3.2 Any director, officer, or employee of the Corporation who has been successful as a party on the merits or otherwise in his defense of any claim, action, suit, or proceedings referred to in the first sentence of Section 9.3.1 shall be indemnified as of right against expenses (including attorneys' fees) reasonably

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incurred by him in connection therewith (except to the extent covered by insurance).

9.3.3 Except as provided in Section 9.3.2 above, any indemnification under Section 9.3.1 shall be made by the Corporation only upon a determination that indemnification of the particular director, officer, or employee is proper in the circumstances because such person has met the applicable standards of conduct set forth in Section 9.3.1. Such determination shall be made (i) by the Board of Directors of the Corporation by a majority vote of a quorum consisting of members of the Board of Directors who were not parties to such claim, action, suit, or proceeding, or (ii) if such a quorum is not obtainable or if so directed by a majority vote of a quorum consisting of members of the Board of Directors who were not parties to such claim, action, suit or proceeding, by independent legal counsel (who may be regular counsel of the Corporation) in a written opinion, or (iii) by majority vote of the Class "A" Members and Class "B" Members.

9.3.4 The indemnification provided by this Section 9.3 shall not be deemed exclusive of any other rights to which a director, officer, or employee may be entitled under any by-law, resolution, agreement, vote of the members, or otherwise, and shall continue as to a person who has ceased to be a director, officer, or employee of the Corporation, and shall inure to the benefit of the heirs, executors, and administrators of any such person. The indemnification provided by this Section 9.3 shall be applicable to claims, actions, suits, or proceedings made or commenced after the adoption hereof, arising from acts or omissions to act whether before or after the adoption hereof.

9.3.5 This Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, partner, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Section 9.3, together with expenses actually and reasonably incurred by him in connection with his defense thereof; provided that when and to the extent that the Corporation has purchased and maintained such insurance, it shall have no duty under this Section 9.3 to indemnify any such person to the extent such liability is covered by such insurance.

Section 9.4 Compensation of Employees. In order to carry out the purposes and activities of the Corporation, such individuals as are deemed necessary may be employed, and each such employee may be paid such compensation for services actually rendered in the course of such employment as may be fixed in this manner provided by the Board of Directors of the Corporation.

Section 9.5 Bylaws. The Bylaws of the Corporation may be amended as set forth in the Bylaws. Said Bylaws may contain other provisions consistent with the laws of the State of Indiana, for the regulation and management of the affairs of the Corporation.

Section 9.6 Powers of the Board of Directors. Subject to any limitation or restriction imposed by law or by these Articles of Incorporation, the Board of Directors of the Corporation is hereby authorized to exercise, in furtherance of the purposes of the Corporation, all the powers of the Corporation without authorization or approval of the Lot Owners.



EXHIBIT B

BOOK 234 PAGE 702

Bylaws

BYLAWS

BOOK 234 PAGE 703

OF

MOSS CREEK VILLAGE HOMEOWNERS' ASSOCIATION, INC.

AN INDIANA NOT-FOR-PROFIT CORPORATION

#### ARTICLE ONE

##### Identification and Applicability

**Section 1.1 Identification and Adoption.** These Bylaws are executed simultaneously with the execution of a certain Declaration of Covenants, Conditions and Restrictions for Moss Creek Village at Winslow Farms (hereinafter referred to as the "Declaration") to which these Bylaws are attached and of which they are made a part. The Declaration is incorporated herein by reference and all of the covenants, conditions, rights, restrictions, and liabilities therein contained shall apply to and govern the interpretation of these Bylaws. The definitions and terms as defined and used in the Declaration shall have the same meanings in these Bylaws and reference is hereby made to the definitions in Section 1 of the Declaration. The provisions of these Bylaws shall apply to the Property and to the administration and conduct of the affairs of the Association.

**Section 1.2 Individual Application.** All of the Owners, tenants, their guests and invitees, or any other person who might now or hereafter use or occupy any Lot or any part of Phase I Real Estate or Additional Real Estate annexed to the Declaration as provided therein, shall be subject to the rules, restrictions, terms and conditions set forth in the Declaration and these Bylaws, as the same may be amended from time to time.

#### ARTICLE TWO

##### Meetings of Association

**Section 2.1 Purpose of Meetings.** At least annually and at such other times as may be necessary or appropriate, a meeting of the Owners shall be held for the purpose of electing the Board of Directors, approving the annual budget, providing for the collection of Common Expenses and Assessments, and for such other purposes as may be required by the Declaration and these Bylaws.

**Section 2.2 Annual Meetings.** Annual meetings shall be held on the first Tuesday of February in each calendar year. At each annual meeting, the Owners shall elect the Board of Directors of the Association in accordance with the provisions of these Bylaws and transact such other business as may properly come before the meeting.

**Section 2.3 Special Meetings.** A special meeting of the Members may be called by resolution of the Board of Directors or upon a written petition of the Owners who have not less than twenty-five percent (25 %) of the Class A and Class B membership votes. Any resolution or petition shall be presented to the President or Secretary of the Association and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

**Section 2.4 Notice and Place of Meetings.** A meeting of the Members of the Association shall be held at any suitable place in Monroe County, Indiana, as may be designated by the Board of Directors. Written notice stating the date, time, place of any meeting, and in the case of a special meeting the purpose(s) for which the meeting is called, shall be delivered or mailed by the Secretary of the Association to each Member and, if applicable, to any Mortgagee, not less than fourteen (14) days prior to the date of such meeting. The notice shall be mailed or delivered to the Owners at their address as it appears upon the records of the Association. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

**Section 2.5 Substitute Annual Meeting.** If the annual meeting shall not be held on the day designated by the Bylaws, a substitute annual meeting may be called in accordance with the provisions of Section 2.4 of this Article. A meeting so called shall be designated and treated for all purposes as the annual meeting.

**Section 2.6 Voting.**

For the purposes of the conducting of meetings and voting at meetings, the Declarant shall be considered included within the term "Owner" for the purposes of these Bylaws. Voting rights shall be determined in accordance with the Declaration as follows:

**Class A.** Class "A" Members shall be Owners except Declarant and shall be entitled to one vote for each Lot owned. All persons holding an interest in any Lot shall be members provided, however, each Lot represented shall have only one vote as the Owners of such Lot may determine.

**Class B.** The Class "B" member shall be Declarant and Declarant shall be entitled to ten (10) votes for each Lot owned. The Class B membership shall cease and terminate upon the Applicable Date.

**2.6.1. Multiple Owner.** Where the Owner of a Lot constitutes more than one person, or is a partnership, there shall be only one voting representative entitled to the vote allocable to that Lot. At the time of acquisition of title to be a Lot by a multiple Owner or a partnership, those persons constituting such Owner or the partners shall file with the Secretary of the Association a proxy appointing one of such persons or partners as the voting representative for such Lot which shall remain in effect until such appointed representative relinquishes such appointment in writing, becomes incompetent, dies, or such appointment is otherwise rescinded.

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by order of a court of competent jurisdiction, or the subject Lot which forms the basis of the vote is conveyed. Such appointed voting representative may grant a proxy to another to vote in his place at a particular meeting(s) pursuant to paragraph 2.6.3 of this Section 2.6, which shall constitute relinquishment of his right to act as voting representative for the Lot.

**2.6.2 Voting by Corporation or Trust.** Where a corporation or trust is an Owner or otherwise entitled to vote, the trustees may cast the vote on behalf of the trust, and the agent or other representative of the corporation duly empowered by the board of directors of such corporation shall cast the vote to which the corporation is entitled.

**2.6.3 Proxy.** At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of State before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot; or, upon receipt of a notice by the Secretary, or the Board of Directors of the death or judicially declared incompetence of a member; or, upon the expiration of eleven (11) months from the date of the proxy. A form of proxy or written ballot may provide an opportunity to specify approval or disapproval with respect to any proposal.

**2.6.4 Quorum.** Except where otherwise expressly provided in the Declaration or these Bylaws, the Owners representing fifty percent (50%) of each class of membership, taken together, shall constitute a quorum at all meetings. The term majority of Owners or majority of vote, as used in these Bylaws, shall mean the Owners entitled to not less than fifty percent (50%) of the votes in accordance with the Declaration as such may be amended from time to time and shall not mean a majority of the persons or votes present or represented at such meeting.

**2.6.5 Conduct of Meeting.** The Chairman of the meeting shall be the President of the Association. The President shall call the meeting to order at the duly designated time, and business will be conducted in the following order:

**Reading of Minutes.** The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto.

**Treasurer's Report.** The Treasurer shall report to the Members concerning the financial condition of the Association and to answer relevant questions of the Members concerning the common expenses and financial report for the prior year and the proposed budget for the current year.

**Budget.** The proposed budget for the current calendar year shall be presented to the Members for approval or amendment.



Election of Board of Directors. Nominations for the Board of Directors may be made by any Member from those persons who are eligible to serve. Such nominations must be in writing and presented to the Secretary of the Association at least ten (10) days prior to the annual meeting. Voting for the Board of Directors will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a director. Each Member may cast his vote for each of as many nominees as are to be elected; however, he shall not be entitled to accumulate his votes. Those persons receiving the highest number of votes shall be elected. All voting for election of the Members of the Board of Directors shall be conducted by secret ballot.

Other Business. Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Association at least ten (10) days prior to the date of the meeting; provided, however, that such written requests may be waived at the meeting if all Members present at the meeting consent.

Adjournment. Upon completion of all business before the Association, the President, upon the motion of any Member, may adjourn the meeting; provided, however, that no annual meeting shall be adjourned until a budget is approved by the Members for the upcoming year.

### ARTICLE THREE

#### Board of Directors

##### Section 3.1 Board of Directors.

3.1.1. The affairs of the Association shall be governed and managed by the Board of Directors. The initial Board of Directors shall be composed of three (3) persons.

3.1.2. The initial Board of three (3) Directors shall be selected by the Declarant and shall serve as the Board of Directors from the date upon which this Declaration is recorded in the Monroe County, Indiana, public records until the Applicable Date and the qualification of successor directors elected at a meeting of voting members.

3.1.3. This paragraph governs directors elected after the term of the initial Board of Directors has expired pursuant to 3.1.2. Directors shall be elected at the annual meeting of the Association and those persons who receive the highest number of votes shall be deemed to

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have been elected. The size of the Board of Directors may be increased from time to time upon the affirmative vote of seventy-five percent (75%) of all Owners provided that the Board of Directors shall not be less than three (3) in number nor more than five (5). After the Applicable Date, each Director shall hold office for a period of one (1) year or until his death, resignation, retirement, removal, disqualification or his successor is elected and qualified. Each Director shall be one of the Owners; provided, however, that in the event an Owner is a corporation, partnership, trust or other legal entity, other than a natural person, or persons, then an officer or director of such corporation, partner of such partnership, beneficiary of such trust or manager of such other legal entity, shall be eligible to serve as a member of the Board of Directors. Nothing herein contained shall be construed to prevent the election of a Director to succeed himself.

3.1.4 Vacancies in the Board, including vacancies due to any increase in the number of persons on the Board shall be filled by majority vote of the remaining Members thereof, except that a vacant position of the Board last filled by a person appointed by the Declarant shall be filled by a person appointed by the Declarant. Any director so elected or appointed to fill a vacancy shall hold office for a term equal to the unexpired term of the director he succeeds. Except as otherwise provided in this Declaration, the Common Area shall be managed by the Board and the Board shall act by majority vote of those present at its meetings when a quorum exists. Meetings of the Board may be called, held and conducted in accordance with such regulations as the Board may adopt. A majority of the total number of Members of the Board shall constitute a quorum.

3.1.5 All meetings of the Board shall be open to attendance by any Lot Owner, except that the President may call the Board into executive session on matters of personnel, infractions of the rules and regulations of the Association, and matters of similar sensitivity. Any action taken by the Board in executive session shall be recorded in the minutes.

3.1.6 Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, if a written consent to such action is signed by all Directors and such consent is filed with the minutes of proceedings of the Board.

**Section 3.2 Powers of the Board of Directors.** The Board of Directors shall have such powers as are reasonably necessary or appropriate to accomplish the performance of their duties. These powers include, but are not limited to, the power:

3.2.1 To employ a professional managing agent or real estate management company (either being hereinafter referred to a "Managing Agent") to assist the Board of Directors in performing its duties;

3.2.2 To purchase for the benefit of the Owners such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;

3.2.3 To procure for the benefit of the Owners fire and extended coverage insurance covering all Buildings, to the full replacement value thereof and to procure public liability and property damage insurance, Directors and officers liability insurance, Workmen's Compensation insurance, and such other insurance as the Board of Directors may determine is necessary for the benefit of the Owners and the Association;

3.2.4 To employ legal counsel, architects, contractors, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Association;

3.2.5 To include the costs of all of the above and foregoing as Common Expenses and assessments and to pay all of such costs therefrom;

3.2.6 To consent to amendment of the Declaration as therein provided;

3.2.7 To adopt, revise, amend and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation and enjoyment of Moss Creek Village or the Common Areas;

3.2.8 To open and maintain a bank account or accounts in the name of the Association.

**Section 3.3 Limitations on Board Action.** The authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Five Thousand Dollars (\$5,000.00) without obtaining the prior approval of a majority of Owners, except in the following cases:

3.3.1 Contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

3.3.2 Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting;

**Section 3.4 Compensation.** No Directors shall receive any compensation for any service to the Association except to such extent as a Director may be reimbursed for actual expenses incurred in the performance of the Director's duties.

**Section 3.5 Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of Directors. The Secretary shall give notice of regular meeting of the Board to each Director personally or by United States mail at least five (5) days prior to the date of such meeting.

A special meeting of the Board of Directors may be called by the President or any two members of the Board of Directors. The person or persons calling such meeting shall give written notice thereof to the Secretary, who shall either personally or by mail and at least three (3) days prior to the date of such special meeting, give notice to the Directors. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place as designated in the notice.

At least once per year, the Board of Directors shall meet in joint session with the Community Board of Directors of the Community Association for the purpose of addressing issues common to both associations.

**Section 3.6 Waiver of Notice.** Before any meeting of the Board of Directors, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting shall, as to such Director, constitute a waiver of notice of the time, place, and purpose thereof. If all Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

**Section 3.7 Quorum.** At all meetings of the Board a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting at which a quorum is present shall be the decision of the Board.

**Section 3.8 Non-Liability of Directors.** The Directors shall not be liable to the Association for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or Bylaws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. Every contract made by the Board shall provide that the Board of Directors, in executing such contract, is acting as agent for the Association and shall have no personal liability thereunder.

**Section 3.9 Additional Indemnity of Directors.** The Association shall indemnify any person, his heirs, assigns, and legal representatives, made a part to any action, suit or proceeding by reason of the fact that the person is or was a Director of the Association, against the reasonable expenses, including attorney's fees, actually and necessarily incurred by the Director in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding, if it shall be found by a majority of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or

misconduct in the performance of his duties where acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent of the Association or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that the Director failed or neglected to attend a meeting or meetings of the Board of Directors.

**Section 3.10 Bond.** The Board of Directors shall require any or all offices and employees of the Association handling or responsible for Association funds to be covered by an adequate bond. The premiums on such bonds shall constitute a Common Expense.

**Section 3.11 Informal Action of Directors.** Action taken by a majority of the Directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all of the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action is taken.

## ARTICLE FOUR

### Officers

**Section 4.1 Officers of the Association.** The principal officers of the Association shall be the President, Vice President and Secretary/Treasurer, all of whom shall be elected by the Board of Directors. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person. Every officer will serve for a term of one (1) year except an officer filling the vacancy created by resignation, death or removal of his successor in which case, the officer shall serve for the unexpired term of his successor.

**Section 4.2 Election of Officers.** The officers of the Association shall be elected annually by the Board at the initial meeting of each new Board. Upon an affirmation vote of a two-thirds (2/3) majority of all members of the Board, any officer may be removed either with or without cause and the officer's successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

**Section 4.3 The President.** The President shall be elected from among the Directors and shall be the chief executive officer of the Association. The President shall preside at all meetings of the Association and of the Board of Directors, shall have and discharge all the general powers and duties usually vested in the office of the President or chief executive officer of an association or a stock corporation organized under the laws of Indiana, including, but not limited to, the power to appoint committees from among the Owners as he may deem necessary to assist in the affairs of the Association and to perform such other duties as the Board of Directors may from time to time prescribe.

**Section 4.4 The Vice President.** The Vice President shall be elected from among the directors and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice President shall also perform such other duties as these Bylaws may prescribe or as shall, from time to time, be imposed upon him by the Board or by the President.

**Section 4.5 The Secretary.** The Secretary shall be elected from among the Board of Directors. The Secretary shall attend all meetings of the Association and of the Board of Directors and shall keep or cause to be kept a true and complete record of proceedings of such meetings, shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association or the Board are duly given, mailed or delivered, in accordance with the provision of these Bylaws.

**Section 4.6 The Treasurer.** The Board shall elect from among the Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association and such other duties incident to the office of Treasurer. The Treasurer shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into possession of the Association, and shall immediately deposit all funds of the Association in some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name of the Association.

**Section 4.7 Assistant Officers.** The Board of Directors may from time to time designate and elect from among the Owners an Assistant Secretary and Assistant Treasurer, who shall have such powers and duties as the officers whom they are elected to assist shall delegate to them and such other powers and duties as these Bylaws or the Board of Directors may prescribe.

**Section 4.8 Compensation.** No officer shall receive compensation from the Association for acting as such.

## ARTICLE FIVE

### Assessments

Regular and Special Assessments shall be determined and collected as follows:

5.1 **Annual Accounting.** Annually, after the close of each calendar year and prior to the date for notice of the annual meeting of the Association, the Board of Directors shall cause to be prepared and shall furnish each Owner a financial statement, which statement shall show all receipts and expenses received, incurred, or paid during the preceding calendar year.

5.2 **Proposed Annual Budget.** Annually, on or before the date for notice of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the ensuing calendar year estimating the total amount of the Common Expenses for the ensuing year and shall furnish a copy of such proposed budget to each Owner prior to the annual meeting. The proposed annual budget shall be submitted to the Owners at the annual meeting of the Association for adoption, and if so adopted shall be the basis for the Regular Assessments for the ensuing calendar year. At the annual meeting of the Owners, the proposed budget may be approved in whole or in part, or may be amended in whole or in part by a majority of the Owners present or represented at the meeting (provided a quorum is present); provided, however, in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owner shall not constitute a waiver or release of the Owner to pay the Common Expenses.

5.3 **Regular Assessments.** The annual budget as adopted shall, based on the estimated cash requirement for the Common Expenses in the ensuing year as set forth in said budget, contain a proposed assessment against each Lot based on the total amount of said budget divided by the total number of Lots. The Regular Assessment against each Lot shall be paid in twelve (12) monthly installments on the first day of each month beginning in January following adoption of the budget. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, that any Owner may elect to pay any Regular Assessment in advance. The Regular Assessment for each year shall become a lien on each separate Lot as of the date of the adoption of the annual budget.

5.4 **Special Assessments.** In addition to the Regular Assessments authorized above, the Association may levy such Special Assessments as may be necessary for the purpose of defraying, in whole or in part: (1) the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, and (2) the expense of any other contingencies or events not provided for in the annual budget or the reserves and the working capital of the Association; provided that no Special Assessments shall be levied without the assent of a majority of the Owners at a meeting duly called for this purpose. Each Owner shall pay the Association a Special Assessment based on the total sum approved to meet the costs and expenses as heretofore provided divided by the total number of Lots in Moss Creek Village. The Association may, in connection with the levy of any Special Assessment, specify that the same shall be payable in installments and specify the due dates thereof.

5.5 **Adjustments.** In the event that the approved budget and Regular Assessments plus the reserves and working capital of the Association provide insufficient to meet the Association's actual expenses in any year, such deficiencies may be corrected through one or more Special Assessments. In the event the approved Regular Assessments exceed actual expenses in any

year, such surplus shall be retained and used to offset expenses in the next year(s) or returned to the Owners proportionately as the Board of Directors shall elect.

**5.6 Temporary Budget and Assessments.** If for any reason an annual budget and the Regular Assessments for any year have not been determined as of January 1 of any year, the budget and Regular Assessments in effect during the preceding year shall continue in effect until such time as the annual budget and annual assessments are determined in accordance with the Declaration and these Bylaws; provided, however, that said preceding budget and Regular Assessments may be increased by up to fifteen percent (15%) as the Board of Directors, by majority vote, may deem necessary in said temporary budget and Regular Assessments.

**5.7 Reserve Funds.** The Association shall be obligated to establish a reserve fund for the repair of the Common Area based upon good faith estimates of the useful life and replacement cost of such Common Area made or obtained by the Association. The reserve fund shall be funded through the payments by the Owners of Common Expenses subject to Regular Assessments and not by an extraordinary or Special Assessment. Extraordinary expenditures not originally included in the annual estimate that become necessary during the year shall be charged first against the reserve fund so established before any Special Assessment is made or levied for such expenditures. All amounts held by the Association pursuant to this Section 5.7 shall be maintained in a separate federally-insured account and any interest thereon shall be added to and deemed a part of such fund.

**5.8 Status of Funds Collected by Association.** All funds collected pursuant to this Article Five shall be held and expended by the Association solely for the purposes designed herein, and, except for such adjustments as may be required to reflect delinquent or prepaid Regular or Special Assessments, shall be deemed to be held for the use, benefit and account of the Owners for the payment of Common Expenses.

**5.9 Accounting Practices of the Association.** The annual budget, the Regular Assessment and all sums assessed by the Association shall be established by using generally accepted accounting principles. The annual budget and the Regular Assessment shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area and of the Patio Homes to the extent such capital expenditures and replacement and repair is the obligation of the Association, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Area.

**5.10 Community Assessments.** Any Regular Assessment or Special Assessment levied by the Community Association shall be in addition to the Regular Assessments and Special Assessments provided for in this Article Five.

**5.11 Collection of Assessments.** Each Assessment shall be due and payable on the due date thereof as specified in the Declaration or in these Bylaws, or if not so specified, then on any due date(s) determined by the Board of Directors. Any Regular or Special Assessment



which is not paid in full by the Delinquency Date shall be deemed delinquent without further notice or demand to the defaulting Owner, and shall bear interest on the unpaid balance thereof from the Delinquency Date until fully paid, at a rate of interest equal to eighteen percent (18%) per annum. In the event that any costs or expenses, including attorney's fees, are incurred by or on behalf of the Association with respect to the recovery or collection of any delinquent Assessment, all such costs and fees shall be due and payable immediately by such delinquent Owner and shall bear interest from the date incurred until paid in full, at a rate of interest equal to eighteen percent (18%) per annum. All interest and all costs and expenses payable hereunder with respect to a delinquent Assessment shall be added to and deemed a part of such delinquent Assessment and shall constitute a lien on the delinquent Owner's Lot and Patio Home as of the date on which such delinquent Assessment first became a lien. In the event that any Assessment is not fully paid on or before the Delinquency Date, the Association shall be entitled to accelerate and declare due and payable in full all installments of Assessments due for the calendar year in which such delinquency occurs, and to enforce payment of the same by foreclosure of said lien and/or other appropriate legal proceedings in accordance with the laws of the State of Indiana. The Owner and any occupant of the Patio Home shall be jointly and severally liable for the payment to the Association of reasonable rental for such Patio Home and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Patio Home and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board of Directors may at its option, bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same.

5.12. Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in the Declaration, the Articles of Incorporation of the Association or these Bylaws, any sale or transfer of a Lot or Patio Home to a Mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosure shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior Owner from personal liability therefor.

## ARTICLE SIX

### Rules and Regulations

Section 6.1 Right of Board to Adopt Rules and Regulations. The Board of Directors may promulgate such additional rules and regulations regarding the operation of Moss Creek Village, including but not limited to the use of the Common Areas, as it may deem necessary from time to time and such rules as are adopted may be amended by a vote of a majority of the Board, and the Board shall cause copies of such rules to be delivered or mailed promptly to all Owners.

## ARTICLE SEVEN

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### Amendment to Bylaws

**Section 7.1** Prior to the Applicable Date, these Bylaws may be amended by a majority vote or by written consent of all initial directors. After the Applicable Date, these Bylaws may be amended by a vote of not less than sixty-six and two-thirds percent (66 2/3%) of the vote of the Owners in a duly constituted meeting called for such purpose. Provided, however, that no amendment to these Bylaws which materially impairs the right of any mortgagee or any party holding, insuring or guaranteeing any mortgage on all or any portion of Moss Creek Village may be made unless the Mortgagees consent in writing to the amendments.

## ARTICLE EIGHT

### Notices and Mortgagees

**Section 8.1 Notice to Association.** Any Owner who places a first mortgage lien upon his Lot or the Mortgagee thereof shall notify the Secretary of the Association and provide the name and address of the Mortgagee. A record of such Mortgagee and such name and address shall be maintained by the secretary and any notice required to be given to any Owner pursuant to the terms of the Declaration or these Bylaws shall be deemed given in the same manner and in the same effect to such Mortgagee.

**Section 8.2 Notice of Unpaid Assessments.** The Association shall, upon request of a Mortgagee, a proposed mortgagee or purchaser who has a contractual right to purchase a Lot, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments against the Lot, which statement shall be binding upon the Association and the Owners, and any mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments in excess of the amount set forth in such statement.

**Section 8.3 Notice and Representative.** Any and all Mortgagees shall receive notice of meetings of the Association and shall receive specific notice from the Association of the intention of the Association to amend any provisions of the Declaration, Bylaws, or Articles of Incorporation of the Association; and any and all Mortgagees shall have the right to designate a representative to attend any meetings of the Association.

## ARTICLE NINE

### Insurance

**Section 9.1 Insurance on Individual Mortgaged Lots.** The Owner of any Lot shall carry property insurance through a company approved by the Board. This insurance should provide protection against loss or damage from fire and other hazards covered by the standard

homeowner coverage, and in the amount equal to the full replacement value (i.e. 100% of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage).

**Section 9.2 Minimum Requirement for Association Insurance.** The Association shall as a minimum obtain and carry a policy of property insurance in an amount equal to the full replacement value (i.e. 100% of current "replacement cost" exclusive of land, foundation, excavation and other items normally excluded from coverage) of the common facilities owned by the Association (including all building service equipment and the like) with an "Agreed Amount Endorsement" or its equivalent, a "Demolition Endorsement" or its equivalent, and, if necessary, an "Increased Cost of Construction Endorsement" or "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, such insurance to afford protection against at least the following:

9.2.1 loss or damage by fire and other hazards covered by the standard extended, coverage endorsement, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage; and

9.2.2 such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

**Section 9.3 Public Liability Insurance.** The Association shall as a minimum carry and maintain in force a comprehensive policy of public liability insurance covering all of the Common Area located in Moss Creek Village insuring the Association with limits not less than \$1,000,000.00 covering all claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against water damage liability, liability for non-owned and hired automobile, liability for property of others, and, if applicable, garage-keeper's liability, host liquor liability, and such other risks as shall customarily be covered with respect to projects similar in construction, location and use.

**Section 9.4 Minimum Bonding Requirement.** The Association shall be required to maintain adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of such Association and all others who handle, or are responsible for handling funds of the Association. Such fidelity bonds shall meet the following requirements:

9.4.1 all such fidelity bonds shall name the Association as an obligee; and

9.4.2 such fidelity bonds shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the Association, including reserves, unless a greater amount is required by FNMA; and

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9.4.3 such fidelity bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and

9.4.4 such bonds shall provide that they may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least 30 days prior written notice.

**Section 9.5 Director and Offices Insurance.** The Association shall carry Director and Officers liability insurance in order to protect it from causes of action resulting from the actions or inactions of the Board.

**Section 9.6 Workmen's Compensation Insurance.** The Association shall carry Workmen's Compensation insurance if and to the extent necessary to meet the requirements of law.

**Section 9.7 Additional Insurance.** The Association shall carry any additional insurance as the Board of Directors may determine or the Declaration may require.

Certified to be the Bylaws adopted by consent of the Directors of Moss Creek Village Homeowners' Association, Inc. dated this 6 day of March, 1995.

  
Secretary

## EXHIBIT C

§ 31-234-718

## Additional Real Estate

A part of the Southeast Quarter of Section 9, Township 8 North, Range 1 West, Monroe County, Indiana, being more particularly described as follows:

COMMENCING at the southwest corner of the Southeast Quarter of the Southeast Quarter; thence NORTH 00 degrees 57 minutes 39 seconds West 45.00 feet; to the POINT OF BEGINNING; thence NORTH 00 degrees 57 minutes 39 seconds West 1211.71 feet; thence NORTH 89 degrees 01 minutes 13 seconds East 73.65 feet; thence 26.39 feet along a 270 foot radius tangent curve to the right whose chord bears SOUTH 88 degrees 10 minutes 48 seconds East 26.38 feet; thence SOUTH 00 degrees 57 minutes 39 seconds East 132.71 feet; thence SOUTH 36 degrees 17 minutes 44 seconds East 105.00 feet; thence SOUTH 76 degrees 32 minutes 46 seconds East 105.00 feet; thence NORTH 68 degrees 44 minutes 06 seconds East 84.64 feet; thence SOUTH 21 degrees 15 minutes 54 seconds East 129.11 feet; thence 166.24 feet along a 230.00 foot radius tangent curve to the left whose chord bears SOUTH 41 degrees 58 minutes 16 seconds East 162.64 feet; thence SOUTH 62 degrees 40 minutes 38 seconds East 14.96 feet; thence 41.32 feet along a 25.00 foot radius tangent curve to the right whose chord bears SOUTH 19 degrees 50 minutes 48 seconds East 36.77 feet; thence 266.18 feet along a 870.00 foot radius tangent curve to the right whose chord bears SOUTH 32 degrees 38 minutes 37 seconds West 265.14 feet; thence SOUTH 41 degrees 24 minutes 30 seconds West 32.10 feet; thence 303.38 feet along a 355.00 foot radius tangent curve to the left whose chord bears SOUTH 16 degrees 55 minutes 33 seconds West 294.23 feet; thence SOUTH 7 degrees 33 minutes 24 seconds East 155.00 feet; thence 45.45 feet along a 25.00 foot radius tangent curve to the right whose chord bears SOUTH 37 degrees 23 minutes 04 seconds West 39.44 feet; thence SOUTH 89 degrees 00 minutes 15 seconds West 253.00 feet to the POINT OF BEGINNING, containing 8.65 acres, more or less.

**EXCEPTING THEREFROM:**

A part of the Southeast Quarter of Section 9, Township 8 North, Range 1 West, Monroe County, Indiana, and being more particularly described as follows:

COMMENCING at the southwest corner of the Southeast Quarter of the Southeast Quarter of said section; thence NORTH 00 degrees 57 minutes 39 seconds West 575.82 feet along the west line of said quarter quarter section to the POINT OF BEGINNING; thence NORTH 00 degrees 57 minutes 39 seconds West 164.02 feet along said west line; thence SOUTH 90 degrees 00 minutes 00 seconds East 305.45 feet; thence SOUTH 19 degrees 12 minutes 47 seconds East 211.57 feet to the westerly right-of-way of Winslow Farm Road; thence SOUTH 41 degrees 24 minutes 30 seconds West 38.58 feet along said right-of-way to the proposed southerly right-of-way of Moss Creek Drive; thence along said southerly right-of-way the following four (4) courses: 1. 10.58 feet along a 25.00 foot radius non-tangent curve to the left whose chord bears NORTH 38 degrees 25 minutes 36 seconds West 10.50 feet; thence 2. 103.63 feet along a 188.00 foot radius tangent curve to the left whose chord bears NORTH 65 degrees 53 minutes 39 seconds West 102.32 feet; thence 3. NORTH 81 degrees 36 minutes 30 seconds West 96.06 feet; thence 4. 119.60 feet along a 88.00 foot radius tangent curve to the left whose chord bears SOUTH 59 degrees 40 minutes 33 seconds West 110.61 feet; thence NORTH 45 degrees 00 minutes 00 seconds West 80.72 feet to the Point of Beginning, containing 1.44 acres, more or less.

Total remaining acreage after said exception is 7.21 acres, more or less.

EXHIBIT D

Phase I Real Estate

234 719

LEGAL DESCRIPTION FOR  
MOSS CREEK VILLAGE  
LOT NUMBERS 11, 12, 13, 14, 15 AND 16  
JOB NUMBER 2358

A part of the Southeast Quarter of Section 9, Township 8 North, Range 1 West, Monroe County, Indiana, and being more particularly described as follows:

COMMENCING at the southwest corner of the Southeast Quarter of the Southeast Quarter of said section; thence NORTH 00 degrees 57 minutes 39 seconds West 575.82 feet along the west line of said quarter section to the POINT OF BEGINNING; thence NORTH 00 degrees 57 minutes 39 seconds West 164.02 feet along said west line; thence SOUTH 90 degrees 00 minutes 00 seconds East 305.45 feet; thence SOUTH 19 degrees 12 minutes 47 seconds East 211.57 feet to the westerly right-of-way of Winslow Farm Road; thence SOUTH 41 degrees 24 minutes 30 seconds West 38.58 feet along said right-of-way to the proposed southerly right-of-way of Moss Creek Drive; thence along said southerly right-of-way the following four (4) courses: 1. 10.58 feet along a 25.00 foot radius non-tangent curve to the left whose chord bears NORTH 38 degrees 25 minutes 36 seconds West 10.50 feet; thence 2. 103.63 feet along a 188.00 foot radius tangent curve to the left whose chord bears NORTH 65 degrees 53 minutes 39 seconds West 102.32 feet; thence 3. NORTH 81 degrees 36 minutes 30 seconds West 96.06 feet; thence 4. 119.60 feet along a 88.00 foot radius tangent curve to the left whose chord bears SOUTH 59 degrees 40 minutes 33 seconds West 110.61 feet; thence NORTH 45 degrees 00 minutes 00 seconds West 80.72 feet to the Point of Beginning, containing 1.44 acres, more or less.

242 328

RECORDED  
A.M. 2:26 P.M.

618784

FIRST AMENDMENT

NOV 15 1996

TO THE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF

MOSS CREEK VILLAGE AT WINSLOW FARM, PHASE I

The Declarant executes this *First Amendment to the Declaration of Covenants, Conditions And Restrictions of Moss Creek Village at Winslow Farm, Phase I* this 5 day of November, 1996 as follows:

Recitals

(A) Wininger/Stolberg Communities LLC is the "*Declarant*" as identified in the original *Declaration of Covenants, Conditions and Restrictions of Moss Creek Village at Winslow Farm, Phase I* (the "*Declaration*").

(B) The *Declaration* was executed by *Declarant* on August 21, 1995 and was recorded in the Office of the Recorder of Monroe County, Indiana on September 14, 1995 as instrument number 513202 in Miscellaneous Record 234, pages 668 through 719, inclusive.

(C) *Declarant* reserved the right to amend the *Declaration* in Section 22.7 of the *Declaration*.

(D) As of the date of this *First Amendment to the Declaration of Covenants, Conditions and Restrictions of Moss Creek Village at Winslow Farm, Phase I*, the *Declarant* remains in control of the Moss Creek Village Homeowners' Association, Inc.

(E) *Declarant* wishes to exercise its reserved right to amend the *Declaration* on the terms contained herein.

The undersigned agree as follows:

1. The *Declaration* is modified by amending Section 1.6, Common Areas to read as follows:

"1.6. Common Area. "Common Area" means: (1) all of the area in Moss Creek Village outside the boundaries of any Lot; and, (2) the Retaining Walls."

2. The Declaration is modified by adding the following sections to Section 1. Definitions.

**1.20. Retaining Walls.** "Retaining Walls" means the retaining walls owned by the Association which were initially constructed by Declarant on the Real Estate.

**1.21. Retaining Wall Easement.** "Retaining Wall Easement" means the permanent non-exclusive access and maintenance easement over and along the Owner's Lots at the locations as depicted on the Plat in favor of the Association for: (1) accessing the Retaining Walls by the Association's agents and employees; and, (2) repairing, maintaining and replacing the Retaining Walls by the Association. In no event shall any Retaining Wall Easement include any Patio Home.

3. The Declaration is modified by adding the following language to the end of Section 4. Lots and Easements.:

"Some Lots located within Moss Creek Village are subject to a Retaining Wall Easement. If a Retaining Wall Easement is depicted on the Plat for any Lot in Moss Creek Village, that Lot is subject to a permanent and non-exclusive Retaining Wall Easement granted to the Association at the location shown on the Plat for the purpose of accessing, maintaining, repairing and replacing the Retaining Walls owned by the Association. Within the Retaining Wall Easement, no Owner shall: (1) construct any walks, structure or other improvements; or, (2) plant any trees, shrubs or other vegetation; or, (3) do anything that interferes with the Association's rights to use the Retaining Wall Easement."

Except as specifically modified by this instrument: (1) all capitalized terms used in this *First Amendment to the Declaration of Covenants, Conditions and Restrictions of Moss Creek Village at Winslow Farm, Phase I* have the same meaning as in the original Declaration; and, (2) the original Declaration remains unmodified and in full force and effect.

The undersigned warrant and represent that they are all of the Members of the Declarant; all of the Directors of the Association; and all of the Directors of the Community Association as of the date of this *First Amendment to the Declaration of Covenants, Conditions and Restrictions of Moss Creek Village at Winslow Farm, Phase I*. The Directors of the Association and the Community Association have joined in this *First Amendment to the Declaration of Covenants, Conditions and Restrictions of Moss Creek Village at Winslow Farm, Phase I* to evidence their consent to the amendment.




Moss Creek Village  
Homeowners' Association, Inc.

Winger/Stolberg Communities  
LLC

  
Eric C. Stolberg, Director

  
Eric C. Stolberg, Member

  
H. Timothy Winger, Sr.  
Director


  
H. Timothy Winger, Sr.,  
Member


  
Timothy H. Winger, Jr.  
Director

  
Timothy H. Winger, Jr.,  
Member

WININGER/STOLBERG HC, INC.

WINSLOW FARM COMMUNITY  
ASSOCIATION, INC.

By:   
H. Timothy Winger, Sr.  
President

  
H. Timothy Winger, Sr.  
Director

Attest:   
Timothy H. Winger, Jr.  
Secretary/Treasurer

  
Timothy H. Winger, Jr.  
Director

  
Eric C. Stolberg  
Director

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MONROE )

242 331

H. Timothy Winger, Sr., Timothy H. Winger, Jr. and Eric C. Stolberg, members of Winger/Stolberg Communities LLC personally appeared before me, a Notary Public, in and for said County and State on the 5 day of November, 1996, and who for and on behalf of Winger/Stolberg Communities LLC acknowledged the execution of the foregoing First Amendment to the Declaration of Covenants, Conditions and Restrictions of Moss Creek Village at Winslow Farm, Phase I, and after being duly sworn, stated that the statements contained therein are true.

Name Printed:

Shauna Greer Stuart  
Notary Public

I reside in Lawrence County, Indiana.  
My commission expires: 5-23-00

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MONROE )

H. Timothy Winger, Sr. and Timothy H. Winger, Jr., the President and Secretary of Winger/Stolberg HC, Inc., a member of Winger/Stolberg Communities LLC, personally appeared before me, a Notary Public, in and for said County and State on the 5 day of November, 1996, and who for and on behalf of Winger/Stolberg HC, Inc. acknowledged the execution of the foregoing First Amendment to the Declaration of Covenants, Conditions and Restrictions of Moss Creek Village at Winslow Farm, Phase I, and after being duly sworn, stated that the statements contained therein are true.

Name Printed:

Shauna Greer Stuart  
Notary Public

I reside in Lawrence County, Indiana  
My Commission Expires: 5-23-00

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MONROE )

P. 242 - 332

H. Timothy Winger, Sr., Timothy H. Winger, Jr., and Eric C. Stolberg, the directors of Moss Creek Village Homeowners' Association, Inc. personally appeared before me, a Notary Public, in and for said County and State on the 5 day of November, 1996, and who for and on behalf of Moss Creek Village Homeowners' Association, Inc. acknowledged the execution of the foregoing *First Amendment to the Declaration of Covenants, Conditions and Restrictions of Moss Creek Village at Winslow Farm, Phase I*, and after being duly sworn, stated that the statements contained therein are true.

*Shawna Greer Stuart*

Name Printed: Shawna Greer Stuart  
Notary Public

I reside in Lawrence County, Indiana.  
My commission expires: 5-23-00

dm/103196/83234/08/amend.doc

This instrument Prepared By: James F. Bohrer, Mallor Clendenen Grodner & Bohrer, 511 Woodcrest Drive, Post Office Box 5787, Bloomington, Indiana 47407. 5787 (812) 336-0200

I reside in Kokomo County, Indiana  
My commission expires: 5-23-01

Name Printed: Shawn Greer Stuehl  
Notary Public  
Shawn Greer Stuehl

H. Timothy Winger, Sr., Timothy H. Winger, Jr., and Eric C. Stolberg, the directors of Winslow Farm Community Association, Inc. personally appeared before me, a Notary Public, in and for said County and State on the 5 day of November, 1996, and who for and on behalf of Winslow Farm Community Association, Inc. acknowledged the execution of the foregoing First Amendment to the Declaration of Covenants, Conditions and Restrictions of Moss Creek Village at Winslow Farm, Phase I, and after being duly sworn, stated that the statements contained therein are true.

STATE OF INDIANA )  
COUNTY OF MONROE )  
SS: )

212 333