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Doc 225 652

**Declaration Of Covenants, Conditions and Restrictions  
Of  
The New Bent Tree at Winslow Farm**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS made this \_\_\_\_\_ day of \_\_\_\_\_, 1994, by Winger/Stolberg Communities LLC, an Indiana limited liability company, hereinafter referred to as "Declarant".

WHEREAS, Declarant desires to preserve the character of The New Bent Tree at Winslow Farm and protect the property values therein.

WHEREAS, Declarant is the sole owner of the fee simple title to certain real estate, located in Monroe County, Indiana, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter called the "Real Estate"); and

WHEREAS, Declarant intends to sell the Real Estate restricting it in accordance with a common plan designed to preserve the value and residential qualities of the Real Estate, for the benefit of its future owners;

WHEREAS, Declarant intends to restrict the uses of the Real Estate in accordance with a common plan as stated in this Declaration;

WHEREAS, Declarant plans to improve the Real Estate by constructing fifteen (15) single-family residences upon the Real Estate in Phase I and up to twenty-three (23) additional single-family residences in Phase II; and

NOW, THEREFORE, Declarant declares that the Real Estate 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 portion or portions of the Real Estate.

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

**Section 1.1 The New Bent Tree.** "The New Bent Tree" means the Real Estate described in Exhibit "A", as platted.

**Section 1.2 The New Bent Tree Committee.** "The New Bent Tree Committee" means The New Bent Tree Architectural Control Committee which shall be constituted and governed as set out in Section 7 hereof.

**RECORDED**  
A.M. 11:49 P.M. \_\_\_\_\_  
MAY 09 1994  
RECORDER MONROE CO., IN

- Section 1.3 Residence.** "Residence" means a detached single-family dwelling constructed upon a Lot in The New Bent Tree.
- Section 1.4 Building.** "Building" means all structures erected within The New Bent Tree including Residences, garages, outbuildings or enclosed structures of any kind.
- Section 1.5 Builder.** "Builder" means the person, firm or entity (including the Developer) constructing the first Residence on each Lot.
- Section 1.6 Community Association.** "Community Association" means the Winslow Farm Community Association, Inc., its successors and assigns, an Indiana not-for-profit corporation which is the incorporated Association of Owners of Residences in Winslow Farm.
- Section 1.7 Drainage Easements.** "Drainage Easements" means the easements labeled "D.E." on the Plat which have been created to provide paths and courses for area and local storm drainage, either over land or in adequate underground conduits to serve the needs of The New Bent Tree, the lands adjoining The New Bent Tree, and the public drainage system.
- Section 1.8 Developer.** "Developer" means Winger/Stolberg Communities LLC, an Indiana limited liability company, and any successor or assignee of its interest in all or part of The New Bent Tree or in this Declaration under an instrument or instruments which expressly state that the successor or assignee thereunder shall become the Developer for purposes of this Declaration.
- Section 1.9 Lot.** "Lot" means one of the numbered lots as shown on the Plat of The New Bent Tree.
- Section 1.10 Mortgagee.** "Mortgagee" means the holder, insurer or guarantor of any first mortgage on any Lot or Residence and other improvements constructed on a Lot.
- Section 1.11 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 and provided further that any person holding record fee simple title for purposes of security only shall be excluded.

Section 1.12 Plat. "Plat" means the plat prepared by Smith Neubecker & Associates, Inc., of The New Bent Tree, an addition to the City of Bloomington, Indiana as recorded in the Office of the Monroe County Recorder, Bloomington, Indiana.

Section 1.13 Sewer Easements. "Sewer Easements" mean the easements labeled "S.E." on the Plat which have been created for the use of the local governmental agency having jurisdiction over the storm and sanitary waste disposal system for the City of Bloomington, Indiana for the purpose of installation and maintenance of sewers.

Section 1.14 Winslow Farm Declaration. "Winslow Farm Declaration" means the Declaration of Covenants, Conditions and Restrictions of Winslow Farm, and recorded as Instrument Number 215442 on September 10, 1992 in the Miscellaneous Record Book 216, pages 300-354 in the Office of the Recorder of Monroe County, Indiana, as supplemented and amended pursuant to its terms, the terms and provisions of which constitute binding covenants running with the Real Estate and are in addition to, and not in substitution of this Declaration.

Section 1.15 Utility Easement. "Utility Easement" means the easements labeled "U.E." on the plat which have been created for the installation of electric, telephone, cable television, water, gas or other public utilities.

Section 1.16 Vehicle. "Vehicle" means motor homes, boats, trailers, campers, motorcycles, scooters, trucks, vans, tractors, tractor trailers, buses and automobiles.

## Section 2 In General.

Section 2.1 Name. The development shall be known and designated as "The New Bent Tree at Winslow Farm", an addition to the City of Bloomington, Indiana.

Section 2.2 Residential Development. The New Bent Tree is a single-family residential development and each Residence constructed shall be used by its owners and occupants exclusively for

residential purposes. No commercial building shall be erected, altered, placed or permitted to remain on any portion of The New Bent Tree. No business activity or business shall be carried on or conducted from any Residence. Leasing of a Residence for residential purposes shall not be considered a business or business activity.

**Section 2.3** **Governmental Restrictions.** All Lots and Residences shall be subject to the zoning ordinances and regulations of the applicable governmental authorities, all of which are hereby incorporated by this reference.

**Section 2.4** **Effect on Owners.** The Owners of any Lot subject to this Declaration, by acceptance of a deed conveying title thereto, or in the execution of a contract for the purchase thereof, whether from Developer or a subsequent Owner of such Lot, shall accept such deed and execute such contract subject to each and every restriction and agreement herein contained. By acceptance of such deed or execution of such contract, the Owner acknowledges the rights and powers of Developer and The New Bent Tree Committee with respect to these restrictions, and also, for themselves, their heirs, personal representatives, successors and assigns, such Owners, covenant and agree and consent to and with Developer and to and with the Owners and subsequent Owners of each of the Lots affected by these restrictions to keep, observe, comply with and perform such restrictions and agreements.

**Section 3** **Physical Characteristics of the Development.**

**Section 3.1** **Number of Lots in Tract.** The New Bent Tree will be constructed in phases. The New Bent Tree Phase I will contain fifteen (15) Lots numbered one (1) through fifteen (15) inclusive. Each Lot shall consist of all space within the boundaries thereof as depicted on the Plat.

**Section 3.2** **Easements.** Perpetual and non-exclusive Drainage Easements, Sewer Easements and Utility Easements for the purpose of the installation, maintenance, repair and replacement of all sewer, water, storm water, power and telephone lines, pipes, mains, conduits, transformers, or cable television facilities are reserved as shown on the Plat. Within these easements, no structure, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance

of utilities or which may change the direction or flow of drainage or which may obstruct or retard the flow of drainage. Plants, trees and other vegetation are allowed in these easements.

**Section 3.3 Streets.** All streets as shown on the Plat within the boundaries of The New Bent Tree are hereby dedicated to the public.

**Section 3.4 Underground Utilities.** All utilities, including but not limited to water, gas, electric, sewer and cable television shall be installed underground.

**Section 4 Construction Provisions.**

**Section 4.1 One Residence.** Only one Residence shall be constructed on any Lot.

**Section 4.2 Minimum Size.** The following minimum sizes shall apply to each Residence constructed on a Lot:

- 4.2.1 One-story residences shall have a finished ground floor area of not less than 1,272 square feet above finished grade.
- 4.2.2 Two-story residences and one and one-half story residences shall have a finished ground floor area of not less than 679 square feet above finished grade and a total finished area of not less than 1,336 square feet above finished grade.
- 4.2.3 Split-level residences shall have a total finished area of not less than 1616 square feet above finished grade.

For purposes of this Section 4.2, ground floor area shall be determined from the area of the Residence measured from the outside of the building foundation exclusive of open porches, breezeways, garages, carports, chimney and eaves.

The provisions of this Section 4.2 may be waived by The New Bent Tree Committee upon application in writing by any Lot Owner. No waiver will be valid until it is properly signed by a representative of The New Bent Tree Committee and placed of record in the Office of the Recorder of Monroe County, Indiana.

**Section 4.3 Maximum Height.** No Residence, exclusive of chimney, shall exceed forty (40) feet in height measured from the lowest finished grade level at the front of the foundation visible from any street to the highest point of the roof.

- Section 4.4** Construction of Sewage Lines. All sanitary sewage lines within the Lots shall be designed and constructed in accordance with the provisions and requirements of the City of Bloomington, Indiana.
- Section 4.5** Garages and Driveways. For every Residence located on any Lot within The New Bent Tree, there will be constructed an enclosed garage for the off-street parking of at least two (2) Vehicles. Every Residence shall have a driveway with a minimum width of ten (10) feet extending from the edge of the street in the front of the Lot to a point at least as far as the closest point of the Residence or garage to the street. All driveways shall be paved with either concrete or hot mixed bituminous asphalt material.
- Section 4.6** Setback. No Residence, Building or other permanent structure shall be located on any Lot nearer to the boundaries of the Lot than the minimum setback lines as shown on the Plat or the setback restrictions in effect at the time of construction as established by the City of Bloomington, Indiana, whichever is more restrictive. For the purposes of this covenant, eaves, steps and open porches shall not be considered as part of a Residence; provided, however, that this provision shall not be construed to permit any portion of a Residence on a Lot to encroach upon any other Lot in The New Bent Tree or any adjoining development.
- Section 4.7** Prohibited Building Styles. No bi-level Residences will be constructed on any Lot within The New Bent Tree. Modular construction or modular homes will not be permitted upon any Lot in The New Bent Tree. No used structure will be relocated or placed on any Lot.
- Section 4.8** Solar Devices. No artificial or manmade device which is designed or used for collection of or heating by solar energy or other similar purposes shall be placed, allowed, or maintained upon any portion of The New Bent Tree including any Residence except for solar systems that were incorporated into the original design of the Residence and which are flush with the roofline. This Section 4.8 shall not prohibit the use of "passive solar or geothermal" energy.
- Section 4.9** Garbage Disposals and Sanitary Sewers. All Residences shall be equipped with a mechanical device for the grinding and

disposal of garbage and food waste in the kitchen(s) which shall discharge to the sewer drain. All sewage disposal shall be connected with the sanitary sewer system of the City of Bloomington, Indiana. No septic tanks, holding tanks or cesspools shall be constructed or permitted to remain upon any Lot within The New Bent Tree.

Section 4.10 Lot Access. All Lots shall be accessed from the interior streets of The New Bent Tree. No direct access to Lots shall be permitted from Winslow Farm Road or Henderson Street.

Section 4.11 Light Fixtures, Mailboxes, Etc. In order to preserve the natural quality and aesthetic appearance of the existing geographic areas within The New Bent Tree, any light fixture, basketball goal or similar structure must be approved by The New Bent Tree Committee as to size, location, height and composition before it may be installed. Mailboxes shall be constructed in accordance with plans supplied by The New Bent Tree Committee and no Owner will change the style or color of his mailbox without the prior written approval of The New Bent Tree Committee.

Section 4.12 Exterior Construction. The following requirements shall be applicable unless The New Bent Tree Committee shall approve otherwise: (a) all utility facilities in The New Bent Tree will be underground; (b) whenever possible, all utility meters and HVAC units in The New Bent Tree will be located in places unseen or screened from the front of the Residences; (c) no outside fuel storage tanks will be permitted above ground and no gasoline storage will be permitted above or below ground in The New Bent Tree; (d) all windows in The New Bent Tree will be factory or on the job painted; no raw aluminum windows will be permitted; (e) all gutters and downspouts in The New Bent Tree will be factory or on the job painted; (f) all roof pitches of the Residences will be four to twelve (4:12) or greater; (g) no metal, fiberglass or similar type material awnings or patio covers will be permitted in The New Bent Tree; (h) no above-ground swimming pools will be permitted on any Lot in The New Bent Tree.

Section 4.13 Submission of Documents. No Residence, Building or other permanent structure shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by

The New Bent Tree Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finished grade elevation. Approval or disapproval as required in these covenants by The New Bent Tree Committee shall be in writing. In the event The New Bent Tree Committee fails to approve or disapprove any plans and specifications within thirty (30) days after such plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

**Section 5** **Restrictions on the Use of the Real Estate.** In order to preserve the character of The New Bent Tree and to protect the property values therein, and without intending to limit the generality of the foregoing provisions, the following protective covenants and restrictions are imposed as a common scheme upon The New Bent Tree and shall be applicable to each Lot and to each Residence constructed in The New Bent Tree:

**Section 5.1** **Maintenance of Lots and Improvements.** The Owner of any Lot in The New Bent Tree shall at all times maintain the Lot and his Residence, Building or other structure situated thereon in such a manner as to prevent the Lot, the Residence, Building or other structure from becoming unsightly and, specifically, such Owner shall:

- 5.1.1 Mow the Lot at such times as may reasonably be required in order to prevent the unsightly growth of vegetation and weeds and exercise good husbandry with respect to all landscaping located thereon.
- 5.1.2 Remove all debris or rubbish.
- 5.1.3 Prevent the existence of any other condition that reasonably tends to detract from or diminish the aesthetic appearance of The New Bent Tree.
- 5.1.4 Cut down and remove dead trees.
- 5.1.5 Keep the exterior of the Residence, Buildings and other structures in such a state of repair or maintenance as to avoid their becoming unsightly.



- 5.1.6 Maintain the tree plot and landscaping between the sidewalk and any public street adjacent to the Owner's Lot.
- 5.1.7 Maintain the landscaping and tree plot, if any, between the Owner's Lot and the curb of any public street adjacent to the Owner's Lot.

Reference is hereby made to the terms and provisions of Winslow Farm Declaration which requires the Community Association to maintain signage within Winslow Farm. Each Owner of any Lot upon which any such signs are located grants a perpetual appurtenant easement to the Community Association to repair, replace and maintain any entrance signage located on any Lot in The New Bent Tree.

Section 5.2 Subdivision of a Lot. There shall be no subdivision of any Lot within The New Bent Tree nor any sale thereof in parcels except that a portion of a Lot may be sold to an adjoining Lot Owner if no new Lot is created and if the transferor obtains the prior written approval of The New Bent Tree Committee. The setback requirements set out in Section 4.6 cannot be waived.

Section 5.3 Winslow Farm Declaration. Each Owner of a Lot in The New Bent Tree is expressly subject to the additional restrictions applicable to all Owners in Winslow Farm contained in the Winslow Farm Declaration which is incorporated herein by this reference.

Section 6 Enforcement. The provisions of Sections 4 and 5 hereof shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of The New Bent Tree. In the event that any Owner fails to fully observe and perform the obligations set forth in this Declaration, and in the further event that such failure is not cured within thirty (30) days after written notice of the same is given by The New Bent Tree Committee, any Owner of any Lot within The New Bent Tree shall have the right to commence judicial proceedings to abate or enjoin such failure, and to take such further action as may be allowed at law or in equity to correct such failure after commencement of such proceedings. In the event that such failure causes or threatens to cause immediate and substantial harm to any property outside of such defaulting Owner's Lot or to any person, The New Bent Tree Committee shall have the right to enter upon such Lot for the purpose of correcting such failure and any harm or damage caused thereby, without any liability whatsoever on the part of The New Bent Tree Committee. The failure or forbearance by The New

Bent Tree Committee to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the covenants or restrictions contained in this Declaration cannot be adequately remedied by an action at law and that injunctive relief is appropriate. All costs incurred by The New Bent Tree Committee in connection with any act or proceeding undertaken to abate, enjoin, or correct such failure, including attorney's fees shall be payable by the defaulting Owner upon demand by The New Bent Tree Committee, and shall immediately become a lien against his Lot. The rights in the Owners and The New Bent Tree Committee under this section shall be in addition to all other enforcement rights hereunder or at law or in equity.

**Section 7 The New Bent Tree Committee.**

**Section 7.1 Powers of The New Bent Tree Committee.**

**7.1.1** In General. In order to preserve the natural quality and aesthetic appearance of the existing geographic area, no Residence, Building or improvement of any type or kind shall be repainted, constructed or placed on any Lot in The New Bent Tree and no existing trees shall be removed, without the prior written approval of The New Bent Tree Committee. Such approval shall be obtained only after written application has been made to The New Bent Tree Committee by the Owner of the Lot requesting authorization from The New Bent Tree Committee. Such written application shall be in the manner and form prescribed from time to time by The New Bent Tree Committee, and shall be accompanied by two (2) complete sets of plans and specifications for any such proposed construction or improvement. Such plans shall include plot plans showing the location of all improvements existing upon the Lot and the location of the improvement proposed to be constructed or placed upon the Lot, each properly and clearly designated. Such plans and specifications shall set forth the color and composition of all exterior materials proposed to be used and any proposed landscaping, together with any other material or information which The New Bent Tree Committee may require. All plans and drawings required to be submitted to The New Bent Tree Committee shall be drawn to a scale of one inch (1") equals ten feet (10'), or to such other scale as The New Bent Tree Committee may require. There shall also be

submitted, where applicable, the permits or plat plans which shall be prepared by either a registered land surveyor, engineer or architect. Plat plans submitted for Improvement Location Permit shall bear the stamp or signature of The New Bent Tree Committee acknowledging the approval thereof.

7.1.2 Power of Disapproval. The New Bent Tree Committee may refuse to grant permission to remove trees, repaint, construct, place or make the requested improvement when:

(a) the plans, specifications, drawings or other material submitted are themselves inadequate or incomplete, or show the proposed improvement to be in violation of this Declaration or the Winslow Farm Declaration.

(b) the design or color scheme of a proposed repainting or improvement is not in harmony with the general surroundings of the Lot or with adjacent the Residences or structures; or

(c) the proposed improvement, or any part thereof, or proposed tree removal, would, in the opinion of The New Bent Tree Committee, be contrary to the interests, welfare or rights of all or any part of the other Owners.

7.1.3 Developer Improvements. The New Bent Tree Committee shall have no powers with respect to any improvements or structures erected or constructed by the Developer (or any Builder if Developer has approved the plans therefor).

Section 7.2 Duties of The New Bent Tree Committee. The New Bent Tree Committee shall approve or disapprove proposed improvements within fifteen (15) days after all required information shall have been submitted to it. One copy of submitted material shall be retained by The New Bent Tree Committee for its permanent files. All notifications to applicants shall be in writing, and, in the event that such notification is one of disapproval, it shall specify the reason or reasons for such disapproval.

Section 7.3 Liability of The New Bent Tree Committee. Neither The New Bent Tree Committee nor any agent thereof, nor Developer, shall be responsible in any way for any defects in any plans, specifications or other materials submitted to it, nor for any defects in any work done according thereto.

**Section 7.4 Inspection.** The New Bent Tree Committee may inspect work being performed with its permission to assure compliance with this Declaration and applicable regulations.

**Section 7.5 Membership.** The New Bent Tree Committee shall consist of members designated by the Developer until the sooner of: (1) completion of a Residence on each Lot in The New Bent Tree; or (2) passage of control by Developer to Owners by virtue of a written document in recordable form. After a completed Residence is constructed on every Lot in The New Bent Tree, The New Bent Tree Committee shall consist of three (3) Owners selected from time to time through the written approval of at least 66-2/3 percent of all Owners in The New Bent Tree. Membership on The New Bent Tree Committee may be changed and vacancies shall be filled from time to time upon the written approval of at least 66-2/3 percent of all the Owners in The New Bent Tree; provided, however, that in the event of a vacancy on The New Bent Tree Committee, the remaining (2) members of The New Bent Tree Committee members may appoint an Owner to The New Bent Tree Committee to serve until the requisite percentage of Owners, as aforesaid, shall otherwise appoint an Owner to fill such vacancy.

**Section 7.6 Approvals.** Approvals, determinations, permissions or consent required herein shall be deemed given if they are given in writing signed with respect to The New Bent Tree Committee by two members thereof (except during such time that the Developer controls The New Bent Tree Committee, in which event the written approval of an authorized officer or agent of Developer shall suffice).

**Section 8 Community Association.**

**Section 8.1 Membership.** The Community Association shall provide for the maintenance and repair, replacement, administration and operation of the Community Area, and will perform such other functions as may be designated to it. Each Owner of a Residence shall automatically be a Class A member of the Community Association, but membership shall terminate when such person ceases to own a Residence, and will be transferred to the new Owner; provided, however, any person who holds the interest of an Owner in a Residence 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 Class A member of the Community Association.

**Section 8.2** Community Association Governance. The Community Association shall be governed by the Community Board of Directors elected in accordance with the procedures set forth in the Winslow Farm Declaration.

**Section 8.3** Community Maintenance Areas. The Community Association shall maintain the entrance signage and landscaping; ponds; paths to Winslow Woods; and, right-of-way landscaping as more specifically described in the Winslow Farm Declaration.

**Section 8.4** Regular Assessments and Special Assessments. Each Owner of a Lot in The New Bent Tree will pay the Regular Assessments and Special Assessments levied by the Community Association when due. No Owner may exempt himself for liability by waiving his right to use the Community Maintenance Areas or by refusing to participate in the meetings of the Community Association.

**Section 9** Rights of Mortgagees. Except to the extent otherwise provided herein, no breach of these Restrictions shall defeat or render invalid the lien of any mortgage now existing or hereafter executed upon any portion of The New Bent Tree; provided, however, that if all or any portion of The New Bent Tree is sold under a foreclosure of any mortgage, any purchaser at such sale and his successors and assigns shall hold any and all land so purchased subject to this Declaration. Notwithstanding any other provision of this Declaration, neither the Developer, the Owners nor The New Bent Tree Committee shall have any right to make any amendment to this Declaration which materially impairs the rights of any Mortgagee holding, insuring, or guaranteeing any mortgage on all or any portion of The New Bent Tree at the time of such amendment.

**Section 10** Annexation of Additional Real Estate.

In addition to the Real Estate, Declarant is the fee simple owner of 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

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as the real estate subjected to this Declaration of The New Bent Tree at Winslow Farm and file one or more Supplemental Declarations and Plats for such additional real estate or part thereof as it desires.

If any real estate is platted in a manner similar to The New Bent Tree at Winslow Farm by execution of a Supplemental Declaration, the Owners of such Lots in the additional real estate or part thereof, shall have the same rights and obligations as the Owners herein, and the Community Association shall have the same jurisdiction and authority over such additional real estate or part thereof as its authority and jurisdiction herein.

If Declarant decides not to develop or plat the additional real estate or any part of it in a manner similar to The New Bent Tree, Declarant shall be free to develop the additional real estate in any manner acceptable to Declarant, subject to applicable zoning and planning ordinances.

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 Community Association, Declarant reserves unto itself, its successors and assigns, for the use and benefit of that part of the additional real estate the non-exclusive right and easement to enter upon the streets and Common Areas of The New Bent Tree at Winslow Farm to provide ingress and egress to the additional real estate.

Declarant hereby grants to the Owners in The New Bent Tree the right and easement to enter upon any improved streets and roadways dedicated to public use that may exist in the additional real estate to provide ingress and egress to The New Bent Tree.

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 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, voluntarily subjected by Supplemental Declaration to the jurisdiction of the Community 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 Residence thereon is occupied by someone other than a representative of Declarant.

**Section 11 General Provisions.**

**Section 11.1 Duration.** This Declaration shall be perpetual, run with and bind all the Real Estate and shall inure to the benefit of and be enforceable by the Developer, its respective successors and assigns with the following exception:

The covenants and restrictions set forth in Sections 4 and 5 shall have an initial term of twenty (20) years from the date this Declaration is recorded in the Office of the Recorder or Monroe County, Indiana. At the end of this period, such covenants and restrictions shall automatically be extended for successive periods of ten (10) years each unless at least two-thirds (2/3) of all Owners of Residences which have been subjected to the provisions of this Declaration for The New Bent Tree, at the time of the expiration of the initial period or any extension period, shall sign an instrument, or instruments (which may be in counterparts) in which they shall agree to terminate any or all of said covenants and restrictions in any manner as may be provided by law; however, no such agreement shall become binding unless written notice containing the terms of the proposed agreement is sent to every Residence Owner in all phases of The New Bent Tree at least ninety (90) days in advance of the action taken in authorizing said agreement, and, in any event, any such agreement shall not become effective and binding until three (3) years after the recording of the aforesaid fully executed instrument or instruments containing such agreement.

**Section 11.2 Amendment of Declaration.** Except as otherwise provided herein amendments to this Declaration shall be proposed and adopted in the following manner:

11.2.1 Notice of the subject matter of the proposed amendment shall be given to each Owner of a Residence. Any proposed amendment to this Declaration must be approved by not less than seventy-five percent (75%) of the Residence Owners. Each amendment to the Declaration shall be executed by the Residence Owners casting votes in favor of the amendment and shall be recorded in the office of the Recorder of Monroe County, Indiana, and such amendment shall not become effective until so recorded.

11.2.2 Notwithstanding the foregoing or anything elsewhere contained in this Declaration, Developer shall have the right acting alone and without the consent or approval of the Owners, Builders or any other person, to amend or supplement this Declaration from time to time if such amendment or supplement is required to: (a) provide utility service to any Lot; or, (b) to bring this

BOOK 225 667

Declaration into compliance with any statutory requirements; or, (c) to correct clerical or typographical errors in this Declaration or any exhibit hereto or any supplement or amendment thereto.

**Section 11.3 Notice.** Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, by regular post, with postage prepaid, addressed to the Owner at the last known post office address of the person who appears as Owner in the records of the Monroe County Auditor's Office. Valid notice may also be given to an Owner by (i) personal delivery to any occupant of his Residence over fourteen (14) years of age; or, (ii) by affixing said notice to or sliding same under the front door of his Residence.

**Section 11.4 Severability.** Should any covenant or restriction herein contained, or any article, section, subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall not in any manner affect the other provisions hereof, which are hereby declared to be severable and which shall remain in full force and effect.

**Section 11.5 Rule Against Perpetuities.** If any provision of this Declaration shall be interpreted to constitute a violation of the rule against perpetuities, then such provisions shall be deemed to remain in effect until the death of the last survivor of the now living descendants of the persons signing the Declaration on behalf of Developer plus twenty-one (21) years thereafter.

**Section 11.6 Gender and Number.** Whenever the context of this Declaration so requires, the use of the masculine gender shall be deemed to refer to the feminine or neuter gender and the use of the singular shall be deemed to refer to the plural and vice versa. No pronoun usage shall be deemed to exclude a reference to an institutional, corporate, partnership, or any other type of business entity. The underlined titles are for convenience of reference only and shall not be used as an aid in construing the provisions hereof.





BOOK 225 669

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MONROE )

Timothy H. Winger, Jr., a member of Winger/Stolberg Communities, LLC, personally appeared before me, a Notary Public, in and for said County and State on the 3 day of May, 1994, and acknowledged the execution of the foregoing *Declaration of Covenants, Conditions and Restrictions of The New Bent Tree at Winslow Farm.*

My Commission expires: 02/26/96  
County of Residence: Monroe

Jennifer Holubec  
Notary Public  
Jennifer Holubec  
Name Printed



STATE OF INDIANA )  
 ) SS:  
COUNTY OF MONROE )

H. Timothy Winger, Sr., a member of Winger/Stolberg Communities, LLC, personally appeared before me, a Notary Public, in and for said County and State on the 3 day of May, 1994, and acknowledged the execution of the foregoing *Declaration of Covenants, Conditions and Restrictions of The New Bent Tree at Winslow Farm.*

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Notary Public  
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Name Printed



STATE OF INDIANA )  
 ) SS:  
COUNTY OF MONROE )

Eric C. Stolberg, a member of Winger/Stolberg Communities, LLC, personally appeared before me, a Notary Public, in and for said County and State on the 3 day of May, 1994, and acknowledged the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of The New Bent Tree at Winslow Farm.

My Commission expires: 02/26/96  
County of Residence: Monroe

Jennifer Holubec  
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Jennifer Holubec  
Name Printed



This Instrument Prepared By: James F. Bohrer, Mallor Clendening Grodner & Bohrer, 511 Woodscrest Drive, Post Office Box 5787, Bloomington, IN 47407-5787 (812) 336-0200.

050394\3:01pm\sjh\93234\01\BentTree.CCR

EXHIBIT "A"

BOOK 225 1671

**DESCRIPTION FOR  
BENT TREE EXTENSION  
JOB NUMBER 2006**

A part of the Northwest Quarter 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 a rebar found at the Northwest corner of said quarter quarter section; thence NORTH 89 degrees 27 minutes 29 seconds East 944.74 feet along the North line of said quarter quarter section, to the POINT OF BEGINNING; thence continuing along said North line NORTH 89 degrees 27 minutes 29 seconds East 380.00 feet to a 5/8" rebar set at the Northeast corner of said quarter quarter section; thence SOUTH 00 degrees 57 minutes 35 seconds East 818.09 feet along the East line of said quarter quarter section; thence along the southerly line of a proposed 50 foot road right-of-way the following six (6) courses:

1. SOUTH 88 degrees 28 minutes 43 seconds West 0.86 feet; thence
2. 169.60 feet along a 404.31 foot radius tangent curve to the right whose chord bears NORTH 79 degrees 30 minutes 13 seconds West 168.36 feet; thence
3. NORTH 67 degrees 29 minutes 12 seconds West 178.21 feet; thence
4. 164.03 feet along a 255.00 foot radius tangent curve to the right whose chord bears NORTH 49 degrees 03 minutes 34 seconds West 161.22 feet; thence
5. NORTH 30 degrees 37 minutes 52 seconds West 103.14 feet; thence
6. 192.12 feet along a 225.00 foot radius tangent curve to the left whose chord bears NORTH 55 degrees 05 minutes 23 seconds West 186.34 feet; thence NORTH 10 degrees 26 minutes 56 seconds East 75.00 feet; thence NORTH 36 degrees 21 minutes 57 seconds East 423.11 feet to the Point of Beginning, containing 8.85 acres, more or less.

15/18 CA

241 164

614726

SUPPLEMENTAL DECLARATION

TO THE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF SWEETBRIAR AT WINSLOW FARM

RECORDED  
A.M. 12:05 P.M.

SEP 04 1996

RECORDED MONROE CO. IN.

The Declarant executes this Supplemental Declaration to the Declaration of Covenants, Conditions and Restrictions of Sweetbriar at Winslow Farm this 27<sup>th</sup> day of August, 1996, as follows:

Recitals

(A) Sweetbriar LLC is the "Declarant" as identified in the original Declaration of Covenants, Conditions and Restrictions of Sweetbriar at Winslow Farm (the "Declaration").

(B) The Declaration was executed by Declarant on June 13, 1996 and was recorded June 14, 1996 as instrument number 609664 in Miscellaneous Record 239, pages 503-525 in the office of the Recorder of Monroe County, Indiana.

(C) Declarant in accordance with the terms of Section 10 of the Declaration files this Supplemental Declaration to the Declaration of Covenants, Conditions and Restrictions of Sweetbriar at Winslow Farm.

(D) As of the date of this Supplemental Declaration to the Declaration of Covenants, Conditions and Restrictions of Sweetbriar at Winslow Farm, the Declarant remains in control of the Winslow Farm Community Association, Inc.

(E) Declarant wishes to add the properties described in the attached exhibits to the real property described in "Exhibits A and B" of the Declaration.

The undersigned agree as follows:

1. The real properties described in the attached Exhibits A and B are hereby added to the real property described in Exhibits A and B of the Declaration.

2. Any reference to the term "Lot" in the Declaration shall include one of the numbered lots as shown on the Plat of Sweetbriar, Phase II.

3. Any reference to the term "Plat" in the Declaration shall include the plat prepared by Smith Neubecker & Associates, Inc. of Sweetbriar, Phase II, an addition to the City of Bloomington, Indiana, as recorded in the office of the Recorder of Monroe County, Indiana.

4. Sweetbriar, Phase II will contain the Lots listed on Exhibit B attached to this Supplemental Declaration to the Declaration of Covenants, Conditions and Restrictions of

Doc. 241 PAH 165

*Sweetbriar at Winslow Farm.* Each Lot shall consist of all space within the boundaries thereof as depicted on the Plat.

Except as specifically modified by this instrument, the Declaration remains unmodified and in full force and effect.

The undersigned warrant and represent that they are all of the members of the Declarant as of the date of this *Supplemental Declaration to the Declaration of Covenants, Conditions and Restrictions of Sweetbriar at Winslow Farm.* The Directors of the Winslow Farm Community Association, Inc. have joined in this *Supplemental Declaration to the Declaration of Covenants, Conditions and Restrictions of Sweetbriar at Winslow Farm* to evidence their consent to this Supplemental Declaration.

SWEETBRIAR LLC

By:

  
Eric C. Stolberg  
Member

By:

  
H. Timothy Winger, Sr.  
Member

By:

  
Timothy H. Winger, Jr.  
Member

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MONROE )

Before me, a Notary Public, in and for said County and State, personally appeared Eric C. Stolberg, H. Timothy Winger, Sr. and Timothy H. Winger, Jr., being all of the members of Sweetbriar LLC, an Indiana limited liability company, who acknowledged the execution of this Supplemental Declaration to the Declaration of Covenants, Conditions and Restrictions of Sweetbriar at Winslow Farm and who having been duly sworn, stated that all facts set forth are true to the best of their knowledge, information and belief.

Dated this 29 day of August, 1996.

*Shauna Greer Stuart*

Name Printed:

Shauna Greer Stuart  
Notary Public

I reside in Lawrence County, Indiana.

My commission expires: 5-12-00

This Instrument Prepared By: **Lance D. Like, Mallor Clendening Grodner & Bohrer,**  
511 Woodcrest Drive, Post Office Box 5787, Bloomington, Indiana 47407-5787 (812) 336-0200.  
bm/082996/95317/declar.sup

LEGAL DESCRIPTION FOR  
SWEETBRIAR AT WINSLOW FARM, PHASE I I  
JOB NUMBER 2342

Blk. 241 ... 167

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

BEGINNING at an iron pipe found at the Southwest Corner of said quarter quarter section; thence NORTH 00 degrees 50 minutes 19 seconds West 817.50 feet on the west line of said quarter quarter section to a  $\frac{3}{8}$  rebar set on the south line of Wylie Farm Road; thence on the property line of Sweetbriar at Winslow Farm, Phase I (Plat Cabinet C, Envelope 177) the following seventeen (17) courses: 1. NORTH 89 degrees 59 minutes 23 seconds West 166.16 feet to a set  $\frac{3}{8}$  rebar; thence 2. 122.42 feet on a 325.00 foot radius tangent curve to the left whose chord bears NORTH 79 degrees 12 minutes 43 seconds East 121.57 feet to a found  $\frac{3}{8}$  rebar; thence 3. NORTH 68 degrees 25 minutes 56 seconds East 94.93 feet to a set  $\frac{3}{8}$  rebar; thence 4. SOUTH 21 degrees 34 minutes 04 seconds East 5.67 feet to a set  $\frac{3}{8}$  rebar; thence 5. 37.56 feet on a 278.00 foot radius tangent curve to the right whose chord bears SOUTH 17 degrees 41 minutes 51 seconds West 37.53 feet to a set  $\frac{3}{8}$  rebar; thence 6. 32.80 feet on a 55.00 foot radius non-tangent curve to the left whose chord bears SOUTH 40 degrees 46 minutes 03 seconds West 32.32 feet to a set  $\frac{3}{8}$  rebar; thence 7. SOUTH 89 degrees 56 minutes 41 seconds West 23.41 feet to a set  $\frac{3}{8}$  rebar; thence 8. 34.82 feet on a 222.00 foot radius tangent curve to the left whose chord bears SOUTH 85 degrees 40 minutes 28 seconds West 34.78 feet to a set  $\frac{3}{8}$  rebar; thence 9. SOUTH 08 degrees 59 minutes 16 seconds East 122.59 feet to a set  $\frac{3}{8}$  rebar; thence 10. NORTH 89 degrees 00 minutes 20 seconds East 55.98 feet to a set  $\frac{3}{8}$  rebar; thence 11. 11.19 feet on a 278.00 foot radius non-tangent curve to the left whose chord bears SOUTH 18 degrees 27 minutes 24 seconds West 11.19 feet to a set  $\frac{3}{8}$  rebar; thence 12. SOUTH 19 degrees 14 minutes 40 seconds West 19.51 feet to a set  $\frac{3}{8}$  rebar; thence 13. SOUTH 70 degrees 45 minutes 21 seconds East 124.00 feet to a set  $\frac{3}{8}$  rebar; thence 14. SOUTH 19 degrees 14 minutes 39 seconds West 104.79 feet to a set  $\frac{3}{8}$  rebar; thence 15. SOUTH 70 degrees 45 minutes 20 seconds East 80.00 feet to a set  $\frac{3}{8}$  rebar; thence 16. SOUTH 71 degrees 17 minutes 55 seconds East 44.00 feet to a set  $\frac{3}{8}$  rebar; thence 17. SOUTH 70 degrees 45 minutes 20 seconds East 83.00 feet to a set  $\frac{3}{8}$  rebar on the west line of Laurelwood at Winslow Farm, Phase I (Plat Cabinet C, Envelope 121); thence leaving the property line of Sweetbriar at Winslow Farm, Phase I and following the west line of Laurelwood at Winslow Farm, Phase I South 19 degrees 14 minutes 40 seconds West 80.54 feet to a  $\frac{3}{8}$  rebar found at the northwest corner of Laurelwood at Winslow Farm, Phase I (Plat Cabinet C, Envelope 141); thence following the west line of said Laurelwood at Winslow Farm, Phase I the following three (3) courses: 1. SOUTH 19 degrees 14 minutes 40 seconds East 128.19 feet to a found  $\frac{3}{8}$  rebar; thence 2. SOUTH 00 degrees 32 minutes 58 seconds East 166.96 feet to a found  $\frac{3}{8}$  rebar; thence 3. SOUTH 50 degrees 00 minutes 59 seconds East 123.76 feet to a found  $\frac{3}{8}$  rebar on the south line of aforementioned quarter quarter section; thence leaving said west line SOUTH 89 degrees 27 minutes 00 seconds East 667.24 feet on said line to the POINT OF BEGINNING, containing 9.79 acres, more or less.

EXHIBIT A



EXHIBIT B

Sweetbriar, Phase II Lots:

Lots 11 - 19

Lots 20, 21, 22, 23

Lots 30 - 39

Lots 41 - 49

Lots 50 - 53

242 328

RECORDED  
A.M. 1:26 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) Winger/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.

  
Eric C. Stolberg, Director

Winger/Stolberg Communities LLC

  
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.

*Shauna Green Stuart*

Name Printed: Shauna Green 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.

*Shauna Green Stuart*

Name Printed: Shauna Green Stuart  
Notary Public

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

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MONROE )

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.

*Shanna Green Stuart*

Name Printed: Shanna Green Stuart  
Notary Public

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

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MONROE )

242 333

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.

*Shauna Green Stuart*

Name Printed: Shauna Green Stuart  
Notary Public

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

This Instrument Prepared By: James F. Bohrer, Mallor Clendening Grodner & Bohrer, 511 Woodcrest Drive, Post Office Box 5787, Bloomington, Indiana 47407-5787 (812) 338-0200.

bm/103196/83234/08/amend.dec