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216 Page 491

**FIRST AMENDMENT  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF  
MOSS CREEK AT WINSLOW FARM**

AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS made this 17 day of September, 1992, by Winger/Stolberg Group - Moss Creek, Inc. ("Declarant"):

**Recitals**

(A) On September 10, 1992, Declarant caused to be recorded a Declaration of Covenants, Conditions and Restrictions of Moss Creek at Winslow Farm, in the office of the Recorder of Monroe County, Indiana, as document Number 215473 in Miscellaneous Record No. 216 at pages 373 through 390 (the "Declaration").

(B) This Amendment is being recorded for the purpose of recording the four (4) Exhibits omitted from the recorded Declaration.

NOW THEREFORE, Declarant hereby amends the Declaration as follows:

Exhibits A through D referred to in the Declaration are one and the same as Exhibits A through D attached to this Amendment.

**RECORDED**  
A.M. \_\_\_\_\_ P.M. 1:48  
SEP 17 1992  
*Declarant*  
RECORDER MONROE CO., IN

WININGER / STOLBERG GROUP -  
MOSS CREEK, INC.  
By: *Eric C. Stolberg* V.P.  
Eric C. Stolberg, Vice President

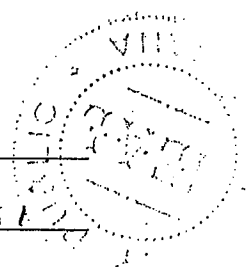
STATE OF INDIANA     )  
                                  ) SS:  
COUNTY OF MONROE    )

Before me, a Notary Public, in and for said County and State, personally appeared Eric C. Stolberg, Vice President of Winger/Stolberg Group - Moss Creek, Inc. who acknowledged the execution of this *First Amendment to Declaration of Covenants, Conditions and Restrictions of Moss Creek at Winslow Farm* and who having been duly sworn, stated that all facts set forth are true to the best of his knowledge, information and belief.

Dated this 17 day of September, 1992.

Name Printed:

*Bernadette Meliski*  
BERNADETTE MELISKI  
Notary Public



I reside in Monroe County, Indiana.

My commission expires: 9-6-94

This Instrument Prepared By: James F. Bohrer, Mallor, Grodner & Bohrer, 511 Woodscrest Drive, P.O. Box 5787, Bloomington, Indiana 47407 (812) 336-0200 bm/091592/92026/Amend.1st

CERTIFICATE OF INCORPORATION  
OF

MOSS CREEK AT WINSLOW FARM HOMEOWNERS' ASSOCIATION, INC.

I, JOSEPH H. HOGSETT, 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 June 17, 1992.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this Seventeenth day of June , 1992



*Joseph H Hogsett*  
\_\_\_\_\_  
JOSEPH H. HOGSETT, Secretary of State

By

*Michael W Poffett*  
\_\_\_\_\_

Deputy

**Articles of Incorporation  
Of  
Moss Creek at Winslow Farm 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 1**

**Name**

The name of the Corporation is "Moss Creek at Winslow Farm Homeowners' Association, Inc."

**ARTICLE 2**

**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 within that certain tract of property described in the *Declaration of Covenants, Conditions and Restrictions of Moss Creek* 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.

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 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 Lots in Moss Creek.

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 the 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 3

#### Term of Existence

The Corporation shall have perpetual existence.

### ARTICLE 4

#### 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 Grodner & Bohrer**, 511 Woodcrest Drive, P.O. Box 5787, Bloomington, Indiana 47407-5787.

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

### ARTICLE 5

#### 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 or other Declarations 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 By-Laws 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:

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.

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.

5.3.1. 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 Section 5.3.3, which shall constitute relinquishment of his right to act as voting representative for the Lot at such meeting(s).

5.3.2. 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.

5.3.3. 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.

5.3.4. Quorum. Except where otherwise expressly provided in the Declaration, these Articles, the By-Laws, 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 applicable provisions set forth in the Declaration, and shall not mean a majority of the persons or votes present or represented at such meeting.

5.3.5. 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 or Site will be entitled to one vote for each Lot owned.



ARTICLE 6

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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 By-Laws of the Corporation. The minimum number of directors so specified shall be three (3) and the maximum number shall be five (5). Whenever the By-Laws 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 By-Laws 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>
Eric C. Stolberg	501 Woodscrest Drive Bloomington, IN 47401
Timothy Wininger, Jr.	501 Woodscrest Drive Bloomington, IN 47401
Timothy Wininger, Sr.	501 Woodscrest Drive Bloomington, IN 47401

ARTICLE 7

Name and Address of Incorporator

The name and address of the incorporator of the Corporation is Eric C. Stolberg, 501 Woodscrest Drive, Bloomington, Indiana 47401.

ARTICLE 8

BOOK 216 PAGE 500

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 9

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 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. 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 By-Laws 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 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. By-Laws. The By-Laws of the Corporation may be amended as set forth in the By-Laws. Said By-Laws 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 Owners.

IN WITNESS WHEREOF, the undersigned incorporator executes these *Articles of Incorporation* and verifies subject to penalties of perjury that the facts contained herein are true.

Dated this 15<sup>th</sup> day of June, 1992.

*Eric C. Stolberg*  
Eric C. Stolberg, Incorporator

STATE OF INDIANA    )  
                                  ) SS:  
COUNTY OF MONROE )

Eric C. Stolberg personally appeared before me, a Notary Public, in and for said County and State on the 15 day of June, 1992, and acknowledged the execution of the foregoing *Articles of Incorporation*, and after being duly sworn, stated that the statements contained therein are true.

My Commission Expires:  
6-22-95  
County of Residence:  
MONROE

*JFB*  
Notary Public  
JAMES F. BOHRER  
(Name Printed)

This Instrument Prepared By: James F. Bohrer, MALLOR GRODNER & BOHRER, 511 Woodcrest Drive, Post Office Box 5787, Bloomington, Indiana 47407-5787 (812) 336-0200.

EXHIBIT "B"  
Code of By-Laws  
Of

800 216 505

Moss Creek at Winslow Farm Homeowners' Association, Inc.

ARTICLE 1

Identification and Applicability

Section 1.1. Identification and Adoption. These By-Laws are adopted simultaneously with the execution of a certain Declaration to which these By-Laws are attached and made a part, thereof. The Declaration is incorporated herein by reference, and all of the covenants, rights, restrictions and liabilities therein contained shall apply to and govern the interpretation of these By-Laws. The definitions and terms as defined and used in the Declaration shall have the same meaning in these By-Laws and reference is specifically made to Section 1 of the Declaration containing definitions of terms. The provisions of these By-Laws shall apply to Moss Creek and the administration and conduct of the affairs of the Association.

Section 1.2. Individual Application. All of the Owners, future Owners, tenants, future tenants, or their guests and invitees, or any other person that might use or occupy any Lot or any part of the 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 By-Laws.

ARTICLE 2

Meetings of Association

Section 2.1. Purpose of Meetings. At least annually, and at such other times as may be necessary, the 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 By-Laws.

Section 2.2. Annual Meeting. The annual meeting of the members of the Association shall be held on the second Tuesday day of November in each calendar year. At the annual meeting the Owners shall elect the Board of Directors of the Association in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 2.3. Special Meetings. A special meeting of the members of the Association 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. The resolution or petition shall be presented to the president or Secretary

of the Association and shall state the purpose for which the meeting is 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. All meetings 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 and place of any meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary of the Association to each Owner 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 and to the Mortgagee at the address as it appears on 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 By-Laws, 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 By-Laws. Voting rights shall be determined in accordance with the Declaration as follows:

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.

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 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 person or partner as the voting representative for such Lot, which shall remain in effect until such appointed representative relinquishes such appointment in writing, becomes incompetent, dies, such appointment is rescinded by an 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 or meetings pursuant to paragraph 2.6.3 of this Section 2.6, which shall not constitute a permanent 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 a Owner or is otherwise entitled to vote, the trustee 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. Proxies. 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 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 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 as otherwise expressly provided in the Declaration or these By-Laws, 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 By-Laws, shall mean the Owners entitled to not less than fifty-one percent (51%) of the votes in accordance with the Declaration as such may be amended from time to time.

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

Reading of the 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 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 the Board of Directors. Nominations for the Board of Directors may be made by any member from those persons 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 date of 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 Board member. Each member may cast the total number of votes to which he is entitled for as many nominees as are to be elected; however, he shall not be entitled to cumulate 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 request may be waived at the meeting if agreed by a majority of the vote.

Adjournment.

### ARTICLE 3

#### Board of Directors

##### Section 3.1. Board of Directors.

3.1.1. The business and property of the Association shall be managed and directed by the Board of Directors composed of three (3) persons, or by such Committees as the Board may establish pursuant to the By-Laws.

3.1.2. The initial Board of three (3) Directors shall be selected by the Declarant 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 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 or decreased 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 maybe taken without a meeting, if a written consent to such action is signed by all members of the Board 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 reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

3.2.1. to employ a managing agent or a real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board 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 the 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, accountants 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 such costs therefrom;

3.2.6. to consent to amendment to 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 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. Limitation 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 \$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 Areas 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 rendered to the Association except to such extent as he may be reimbursed for actual expenses incurred in the performance of his 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 meetings of the Board to each Director personally or by United States mail at least five (5) days prior to the date of such meeting.

Special meetings of the Board may be called by the President or any two members of the Board. 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 Board members. 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 and at such time within Monroe County, Indiana, as shall be 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, 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, 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 By-Laws. 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 he is or was a Director of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him 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 he 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 4

##### 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. 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 affirmative 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 his 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. He shall preside at all meetings of the Association and of the Board, shall have and discharge all the general powers and duties usually vested in the office of 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 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 By-Laws 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 Directors. The Secretary shall attend all meetings of the Association and of the Board and shall keep or cause to be kept a true and complete record of the 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 By-Laws.

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. He 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. He shall immediately deposit all funds of the Association coming into his hands 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 officer whom they are elected to assist shall delegate to them and such other powers and duties as these By-Laws or the Board of Directors may prescribe.

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

## ARTICLE 5

### Assessments

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

5.1. 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.

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 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 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.

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 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. 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 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.

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 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.

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 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 5.7 shall be maintained in a 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 Section 5 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.

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 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.

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 Section 16.

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 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.

5.12. Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in the Declaration, the Articles of Incorporation of the Association or these 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.

#### ARTICLE 6

##### 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, 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 7

##### Amendment to By-Laws

Section 7.1. Prior to the Applicable Date, these By-Laws may be amended by majority vote or by written consent of all initial directors. After the Applicable Date, these By-Laws 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 By-Laws 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 may be made unless the Mortgagees consent in writing to the amendments.

#### ARTICLE 8

##### Mortgages

Section 8.1. Notice to Association. Any Owner who places a first mortgage lien upon his Lot or the mortgagee being the holder of any such first mortgage lien, 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 By-Laws shall be 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 mortgages 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, By-Laws, 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 9**

**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 Requirements 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 Areas located in Moss Creek insuring the Association with limits not less than \$500,000.00 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 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 or 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 many 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 By-Laws adopted by consent of the Directors of Moss Creek at Winslow Farm Homeowner's Association, Inc. dated this 18 day of JUNE, 1992.

  
Secretary

## EXHIBIT C



DESCRIPTION FOR  
MOSS CREEK, PHASE I, REMAINDER  
JOB NUMBER 1831MC

899 216 and 520

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 89 degrees 25 minutes 30 seconds EAST 680.95 feet; thence NORTH 01 degrees 07 minutes 13 seconds WEST 50.00 feet to the point of beginning; thence SOUTH 89 degrees 00 minutes 15 seconds WEST 313.00 feet to a non-tangent curve to the right the radius of which bears NORTH 10 degrees 58 minutes 22 seconds WEST 25.00 feet; thence through a central angle of 99 degrees 02 minutes 24 seconds along the said curve 43.21 feet to a tangent curve to the left the radius of which bears SOUTH 84 degrees 36 minutes 20 seconds WEST 265.00 feet; thence through a central angle of 02 degrees 09 minutes 44 seconds along the said curve 10.00 feet; thence NORTH 07 degrees 33 minutes 24 seconds WEST 158.63 feet to a tangent curve to the right having a radius of 295.00 feet; thence through a central angle of 48 degrees 57 minutes 54 seconds along said curve 252.11 feet; thence NORTH 41 degrees 24 minutes 30 seconds EAST 32.10 feet to a tangent curve to the left having a radius of 930.00 feet; thence through a central angle of 18 degrees 07 minutes 56 seconds along said curve 294.32 feet; thence SOUTH 41 degrees 17 minutes 47 seconds EAST 164.12 feet; thence SOUTH 51 degrees 12 minutes 54 seconds EAST 51.33 feet; thence SOUTH 35 degrees 14 minutes 01 seconds EAST 49.43 feet to a non-tangent curve the radius of which bears SOUTH 39 degrees 43 minutes 55 seconds EAST 138.00 feet; thence through a central angle of 41 degrees 48 minutes 58 seconds along said curve 100.72 feet; thence SOUTH 72 degrees 22 minutes 05 seconds EAST 77.62 feet; thence NORTH 74 degrees 59 minutes 46 seconds EAST 99.09 feet; thence SOUTH 81 degrees 33 minutes 17 seconds EAST 42.03 feet; thence SOUTH 04 degrees 22 minutes 37 seconds WEST 100.00 feet to a non-tangent curve to the right the radius of which bears SOUTH 04 degrees 22 minutes 37 seconds WEST 262.00 feet; thence through a central angle of 05 degrees 39 minutes 34 seconds along the said curve 25.88 feet; thence SOUTH 79 degrees 52 minutes 18 seconds EAST 28.00 feet; thence SOUTH 08 degrees 07 minutes 19 seconds WEST 150.61 feet; thence SOUTH 89 degrees 25 minutes 30 seconds WEST 245.00 feet; thence SOUTH 01 degrees 07 minutes 13 seconds EAST 150.00 feet to the point of beginning, containing 5.902 acres, more or less.

**EXCEPTING THEREFROM**, 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 89 degrees 25 minutes 30 seconds EAST 680.95 feet; thence NORTH 01 degrees 07 minutes 13 seconds WEST 50.00 feet; thence SOUTH 89 degrees 00 minutes 15 seconds WEST 313.00 feet to a non-tangent curve to the right, the radius of which bears NORTH 10 degrees 58 minutes 22 seconds WEST 25.00 feet; thence through a central angle of 99 degrees 02 minutes 24 seconds along the said curve 43.21 feet to a non-tangent curve to the left, the radius of which bears SOUTH 84 degrees 36 minutes 20 seconds WEST 265.00 feet; thence through a central angle of 02 degrees 09 minutes 44 seconds along the said curve 10.00 feet; thence NORTH 07 degrees 33 minutes 24 seconds WEST 158.63 feet to a tangent curve to the right having a radius of 295.00 feet; thence through a central angle of 48 degrees 34 minutes 44 seconds along the said curve 250.12 feet; thence

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NORTH 41 degrees 24 minutes 30 seconds EAST 24.00 feet; thence SOUTH 48 degrees 36 minutes 45 seconds EAST 31.44 feet to a tangent curve to the left having a radius of 138.00 feet; thence along the said curve in a southeasterly direction and through a central angle of 16 degrees 41 minutes 10 seconds for 40.19 feet; thence SOUTH 65 degrees 16 minutes 34 seconds EAST 167.86 feet to a tangent curve to the left having a radius of 23.00 feet; thence along the said curve in a northeasterly direction and through a central angle of 97 degrees 52 minutes 25 seconds for 39.29 feet to a non-tangent curve to the left having a radius of which bears NORTH 69 degrees 12 minutes 35 seconds WEST 163.00 feet; thence along the said curve in a northeasterly direction and through a central angle of 07 degrees 27 minutes 54 seconds for 21.24 feet; thence NORTH 13 degrees 19 minutes 31 seconds EAST 64.05 feet; thence NORTH 48 degrees 23 minutes 11 seconds WEST 100.00 feet; thence NORTH 17 degrees 55 minutes 37 seconds EAST 136.28 feet; thence SOUTH 41 degrees 17 minutes 48 seconds EAST 64.12 feet; thence SOUTH 51 degrees 12 minutes 54 seconds EAST 51.33 feet; thence SOUTH 35 degrees 14 minutes 01 seconds EAST 49.43 feet to a non-tangent curve to the left having a radius of which bears SOUTH 35 degrees 14 minutes 01 seconds EAST 138.00 feet; thence along said curve in a southwesterly direction and through a central angle of 41 degrees 48 minutes 59 seconds for 100.72 feet; thence SOUTH 13 degrees 19 minutes 31 seconds WEST 63.15 feet to a tangent curve to the right having a radius of 187.00 feet; thence along the said curve in a southwesterly direction and through a central angle of 07 degrees 41 minutes 02 seconds for 25.08 feet to a non-tangent curve to the left having a radius of which bears SOUTH 69 degrees 24 minutes 57 seconds EAST 23.00 feet; thence along the said curve in a southeasterly direction and through a central angle of 89 degrees 08 minutes 22 seconds for 39.80 feet to a tangent curve to the left having a radius of 238.00 feet; thence along the said curve in a northeasterly direction and through a central angle of 22 degrees 02 minutes 44 seconds for 91.57 feet; thence NORTH 79 degrees 23 minutes 56 seconds EAST 34.06 feet; thence NORTH 03 degrees 48 minutes 02 seconds WEST 97.60 feet; thence NORTH 74 degrees 59 minutes 46 seconds EAST 58.64 feet; thence SOUTH 81 degrees 33 minutes 17 seconds EAST 42.03 feet; thence SOUTH 04 degrees 22 minutes 37 seconds WEST 124.00 feet to a non-tangent curve to the left having a radius of which bears SOUTH 04 degrees 22 minutes 37 seconds WEST 238.00 feet; thence along the said curve in a southwesterly direction and through a central angle of 14 degrees 58 minutes 41 seconds for 62.22 feet; thence SOUTH 79 degrees 23 minutes 56 seconds WEST 11.97 feet; thence SOUTH 01 degrees 23 minutes 23 seconds EAST 128.86 feet; thence SOUTH 89 degrees 25 minutes 30 seconds WEST 192.81 feet to a non-tangent curve to the right having a radius of which bears NORTH 70 degrees 57 minutes 10 seconds WEST 87.01 feet; thence along the said curve in a southeasterly direction and through a central angle of 82 degrees 48 minutes 53 seconds for 125.76 feet; thence NORTH 78 degrees 08 minutes 27 seconds WEST 9.76 feet to a tangent curve to the left having a radius of 30.00 feet; thence along said curve in a northwesterly direction and through a central angle of 47 degrees 21 minutes 10 seconds for 24.79 feet to a non-tangent curve to the right having a radius of which bears NORTH 35 degrees 30 minutes 11 seconds WEST 32.00 feet; thence along the said curve in a northwesterly direction and through a central angle of 137 degrees 21 minutes 44 seconds for 76.72 feet; thence NORTH 55 degrees 28 minutes 20 seconds WEST 153.16 feet; thence NORTH 73 degrees 05 minutes 38 seconds EAST 156.20 feet; thence SOUTH 59 degrees 54 minutes 27 seconds EAST 8.45 feet; thence SOUTH 01 degrees 52 minutes 35 seconds EAST 55.73 feet; thence SOUTH 06 degrees 35 minutes 09 seconds EAST 47.87 feet to a non-tangent curve to the right having a radius of which bears SOUTH 11 degrees 51 minutes 33 seconds WEST 32.00 feet; thence along the said curve in a southeasterly

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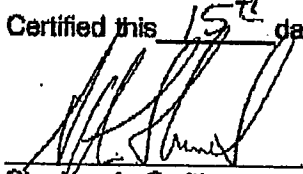
direction and through a central angle of 47 degrees 21 minutes 28 seconds for 26.45 feet to a non-tangent curve to the left having a radius of which bears NORTH 59 degrees 13 minutes 01 seconds EAST 30.00 feet; thence in a southeasterly direction and through a central angle of 47 degrees 48 minutes 46 seconds for 25.03 feet; thence SOUTH 78 degrees 08 minutes 07 seconds EAST 9.52 feet to a tangent curve to the left having a radius of 63.01 feet; thence along the said curve in a northeasterly direction and through a central angle of 102 degrees 45 minutes 26 seconds for 113.00 feet; thence NORTH 00 degrees 54 minutes 27 seconds WEST 27.49 feet to a non-tangent curve to the right having a radius of which bears NORTH 89 degrees 06 minutes 10 seconds EAST 162.00 feet; thence along the said curve in a northeasterly direction and through a central angle of 21 degrees 28 minutes 53 seconds for 60.74 feet; thence NORTH 20 degrees 35 minutes 03 seconds EAST 4.63 feet to a tangent curve to the left having a radius of 23.00 feet; thence along the said curve in a northwesterly direction and through a central angle of 74 degrees 00 minutes 42 seconds for 29.71 feet; thence NORTH 65 degrees 07 minutes 05 seconds WEST 95.72 feet; thence SOUTH 30 degrees 06 minutes 25 seconds WEST 100.07 feet; thence NORTH 59 degrees 54 minutes 27 seconds WEST 88.00 feet; thence NORTH 30 degrees 06 minutes 25 seconds EAST 92.16 feet to a non-tangent curve to the right having a radius of which bears NORTH 26 degrees 59 minutes 54 seconds EAST 162.00 feet; thence along the said curve in a northwesterly direction and through a central angle of 14 degrees 24 minutes 30 seconds for 40.74 feet; thence NORTH 48 degrees 36 minutes 45 seconds WEST 31.44 feet to the point of beginning, containing 2.119 acres, more or less.

This certification does not take into consideration additional facts that an accurate and correct title search and/or examination might disclose.

Evidence of easements have not been located in the field and are not shown on this survey drawing.

Subject to the above reservation, I hereby certify that the survey work performed on the project shown hereon was performed either by me or under my direct supervision and control and that all information shown is true and correct to the best of my knowledge and belief.

Certified this 15<sup>th</sup> day of September, 1992



Stephen L. Smith  
Registered Land Surveyor No. S0427  
State of Indiana





**DESCRIPTION FOR  
MOSS CREEK, PHASE I  
JOB NUMBER 1976MC**

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

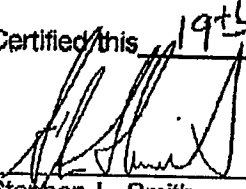
COMMENCING at the southwest corner of the southeast quarter of the southeast quarter; thence NORTH 89 degrees 25 minutes 30 seconds EAST 680.95 feet; thence NORTH 01 degrees 07 minutes 13 seconds WEST 80.00 feet to the point of beginning; thence SOUTH 89 degrees 00 minutes 15 seconds WEST 313.00 feet to a non-tangent curve to the right the radius of which bears NORTH 10 degrees 58 minutes 22 seconds WEST 25.00 feet; thence through a central angle of 99 degrees 02 minutes 24 seconds along the said curve 43.21 feet to a non-tangent curve to the left the radius of which bears SOUTH 84 degrees 36 minutes 20 seconds WEST 265.00 feet; thence through a central angle of 02 degrees 09 minutes 44 seconds along the said curve 10.00 feet; thence NORTH 07 degrees 33 minutes 24 seconds WEST 158.63 feet to a tangent curve to the right having a radius of 295.00 feet; thence through a central angle of 48 degrees 57 minutes 54 seconds along said curve 252.11 feet; thence NORTH 41 degrees 24 minutes 30 seconds EAST 32.10 feet to a tangent curve to the left having a radius of 930.00 feet; thence through a central angle of 18 degrees 07 minutes 56 seconds along said curve 294.32 feet; thence SOUTH 41 degrees 17 minutes 48 seconds EAST 164.12 feet; thence SOUTH 51 degrees 12 minutes 54 seconds EAST 51.33 feet; thence SOUTH 35 degrees 14 minutes 01 seconds EAST 49.43 feet to a non-tangent curve the radius of which bears SOUTH 39 degrees 43 minutes 55 seconds EAST 138.00 feet; thence through a central angle of 41 degrees 48 minutes 58 seconds along said curve 100.72 feet; thence SOUTH 72 degrees 22 minutes 05 seconds EAST 77.82 feet; thence NORTH 74 degrees 59 minutes 48 seconds EAST 99.09 feet; thence SOUTH 81 degrees 33 minutes 17 seconds EAST 42.03 feet; thence SOUTH 04 degrees 22 minutes 37 seconds WEST 100.00 feet to a non-tangent curve to the right the radius of which bears SOUTH 04 degrees 22 minutes 37 seconds WEST 262.00 feet; thence through a central angle of 05 degrees 39 minutes 34 seconds along the said curve 25.88 feet; thence SOUTH 79 degrees 52 minutes 18 seconds EAST 28.00 feet; thence SOUTH 08 degrees 07 minutes 19 seconds WEST 150.81 feet; thence SOUTH 89 degrees 25 minutes 30 seconds WEST 245.00 feet; thence SOUTH 01 degrees 07 minutes 13 seconds EAST 150.00 feet to the point of beginning, containing 5.902 acres, more or less.

This certification does not take into consideration additional facts that an accurate and correct title search and/or examination might disclose.

Evidence of easements have not been located in the field and are not shown on this survey drawing.

Subject to the above reservation, I hereby certify that the survey work performed on the project shown hereon was performed either by me or under my direct supervision and control and that all information shown is true and correct to the best of my knowledge and belief.

Certified this 19<sup>th</sup> day of August, 1992.

  
Stephen L. Smith  
Registered Land Surveyor No. S0427  
State of Indiana  
REVISED 9/2/92 *SS*

