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For First Amendment
to Covenants, Restrictions
See Misc. BK 216 Pg 491
215840
9-17-92
Pat Haley Fee

For Second Amend.
to Cov & Restr. See
Misc BK 216 Pg 577;
216043
9-22-92
Pat Haley Fee

215473

216 373

**Declaration of Covenants, Conditions and Restrictions
of
Moss Creek at Winslow Farm**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS made this 10TH day of SEPT., 1992, by Winger/Stolberg Group - Moss Creek, Inc.

RECITALS

- (A) Declarant is the sole owner of the fee simple title to the Real Estate; and
- (B) Declarant plans to improve the Real Estate by constructing twenty-eight (28) Patio Homes upon the Real Estate in Phase I and up to forty-two (42) additional Patio Homes in all Additional Phases of Moss Creek at Winslow Farm.
- (C) Declarant intends to sell the individual Lots and Patio Homes together with the right to use the Common Areas.

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

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

- 1.1. Additional Real Estate. "Additional Real Estate" means the real property described on Exhibit "C", which may be added to Moss Creek and subjected to this Declaration by Declarant in the future.
- 1.2. Applicable Date. "Applicable Date" means the first to occur of the following events: (i) the date the Class "B" member voluntarily resigns by tendering a written resignation to the resident agent of the Association; or, (ii) the date when Declarant sells all lots in all Phases of Moss Creek; or, (iii) September 30, 1996.
- 1.3. Association. "Association" means Moss Creek at Winslow Farm Homeowners' Association, Inc., its successors and assigns, an Indiana not-for-profit corporation which is the incorporated association of Owners, more particularly described in Section 10. A copy of the *Articles of Incorporation* for the Association is attached as Exhibit "A".

RECORDED
A.M. _____ P.M. 3:49
SEP 10 1992
Pat Haley
RECORDER MONROE CO., IN

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

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

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

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

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

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

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

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

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

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

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

1.15. Plat. "Plat" means the Plat prepared by Smith-Quillman and Associates of Moss Creek at Winslow Farm, Phase I, being on record in the Office of the Recorder of Monroe County, Indiana, as document number 215471 in Plat Book C, pages 49. Additional sections subsequently recorded and subjected to the terms of this Declaration, upon recording of the Plat with the Monroe County Recorder's Office, will also be included in such definition.

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

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

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

1.19. The Winslow Farm Declaration. "The Winslow Farm Declaration" means the Declaration of Covenants, Conditions and Restrictions of Winslow Farm.

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

Section 3. Description of Moss Creek, Phase I. Moss Creek at Winslow Farm, Phase I, consists of twenty-eight (28) Lots numbered 1 through 28, inclusive, together with the Common Area shown on the Plat. The size of the Lots are as designated on the Plat. The legal description for each Lot in Moss Creek at Winslow Farm, Phase I shall be as follows:

Lot ____ in Moss Creek at Winslow Farm, Phase I a subdivision in Monroe County, Indiana, as per Plat thereof recorded September 10, 1992 in Plat Book C, pages 49 in the Office of the Recorder of Monroe County, Indiana.

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

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

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

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

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

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

6.3. The Common Area for each section in Moss Creek shall be conveyed to or owned by the Association at the time of conveyance of the first Lot in Moss Creek.

Section 7. Delegation of Use of the Common Area. Any Owner may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by

the Association, his right of enjoyment, and the use of the Common Area and facilities to members of his family, his tenants or contract purchasers who reside in any Patio Home.

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

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

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

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

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

be and become an Owner and a Member of the Association. The Association shall have two classes of Members:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16.3. **Regular Assessments.** The annual budget as adopted shall, based on the estimated cash requirement for the Common Expenses in the ensuing year as set forth in said budget, contain a proposed assessment against each Lot based on the total amount of said budget divided by the total number of Lots (herein called the "Regular Assessment"). The Regular Assessment against each Patio Home shall be

paid in twelve (12) monthly installments on the first day of each month beginning in January following adoption of the budget. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors as directed by the Board of Directors; provided, however, that any Owner may elect to pay Regular Assessments in advance. The Regular Assessment for each year shall become a lien on each separate Lot and Patio Home as of the date of the adoption of the annual budget.

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

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

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

16.7. Reserve Funds. The Association shall be obligated to establish a reserve fund for the repair of the Common Area based upon good faith estimates of the useful life and replacement cost of such Common Area made or obtained by the Association. The reserve fund shall be funded through the payments by the Owners of 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 16.7 shall be maintained in a federally-insured, account and any interest thereon shall be added to and deemed a part of such fund.

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

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

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

16.11. Collection of Assessments. Each Assessment shall be due and payable on the due date thereof as specified in this Declaration or in the By-Laws, or if not so specified, then on any due date(s) determined by the Board of Directors. Any Regular or Special Assessment which is not paid in full by the Delinquency Date shall be deemed delinquent without further notice or demand to the defaulting Owner, and shall bear interest on the unpaid balance thereof from the Delinquency Date until fully paid, at a rate of interest equal to eighteen percent (18%) per annum. In the event that any costs or expenses, including attorney's fees, are incurred by or on behalf of the Association with respect to the recovery or collection of any delinquent Assessment, all such costs and fees shall be due and payable immediately by such delinquent Owner and shall bear interest from the date incurred until paid in full, at a rate of interest equal to eighteen percent (18%) per annum. All interest and all costs and expenses payable hereunder with respect to a

delinquent Assessment shall be added to and deemed a part of such delinquent Assessment and shall constitute a lien on the delinquent Owner's Lot and Patio Home as of the date on which such delinquent Assessment first became a lien. In the event that any Assessment is not fully paid on or before the Delinquency Date, the Association shall be entitled to accelerate and declare due and payable in full all installments of Assessments due for the calendar year in which such delinquency occurs, and to enforce payment of the same by foreclosure of said lien and/or other appropriate legal proceedings in accordance with the laws of the State of Indiana. The Owner and any occupant of the Patio Home shall be jointly and severally liable for the payment to the Association of reasonable rental for such Patio Home and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Patio Home and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board of Directors may at its option, bring suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same.

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

Section 17. Insurance. Each Patio Home in Moss Creek will be insured with the same insurance company chosen by the Board of Directors of the Association. The limit of insurance for each Patio Home will be equal to the full replacement cost thereof and each owner will be responsible for the premium for their individual Patio Home. Such insurance coverage shall be for the benefit of each Owner, the Homeowner's Association and the Owner's Mortgagee (if applicable). In the event of damage or destruction to any Patio Home, the Owner, Mortgagee (if applicable) and Homeowner's Association shall use such insurance proceeds to repair or restore the damaged property. If for any reason an Owner does not pay the premium allocated to their Home, the Association will add such cost to the Owner's Assessment, which will become immediately due and payable.

The Association, acting through its Board of Directors, shall obtain fire and extended coverage insurance insuring all improvements in the Common Area, in an amount equal to the full replacement cost thereof. The Association shall also obtain comprehensive public liability in such limits as the Board of Directors shall deem appropriate together with workmen's compensation and other liability insurance if deemed necessary and appropriate

by the Board of Directors. Such insurance shall also cover any liability claims of any Member of the Association. The premium for the insurance obtained by the Association shall be paid by the Association as part of the Common Expenses.

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

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

The restoration referred to in this Section 18 shall include the costs of construction incurred rebuilding the Patio Homes in the same condition as they existed immediately prior to the destruction or damage and with the same type of architecture. Notwithstanding any other provisions in this Declaration, all Patio Homes which are destroyed or damaged shall be restored pursuant to the provisions of this Section 18 of this Declaration, unless a majority vote of the Members of the Association decide that such restoration is not necessary, and all improvements in the Common Area which are damaged or destroyed shall be restored by the Association unless two-thirds of the Class A and B Members of the Association and two-thirds of all first Mortgagees decide not to make such restoration or to make such restoration in a different manner.

In the event the Association has insurance proceeds which are to be used for the benefit of the Owners, no distribution of such insurance proceeds shall be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such

proceeds. In such event, any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Area.

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

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

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

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

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

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

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

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

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

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

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

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

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

In the event the Additional Real Estate or any part of it is platted in a manner similar to Moss Creek at Winslow Farm, Phase I, the Owners of such Lots in the Real

Estate or parts thereof, shall have the same rights and obligations as the Owners herein, and the Association shall have the same jurisdiction and authority over such Additional Real Estate or parts thereof as its authority and jurisdiction herein.

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

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

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

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

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

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

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

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

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

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

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

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

22.7. Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in the Articles or in the By-Laws, Declarant shall have the right acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other person, to amend or supplement this Declaration from time to time:

22.7.1. If such amendment is necessary to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration or any other governmental agency or any other public, or quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entity; or,

22.7.2. To induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Patio Homes; or,

22.7.3. To bring this Declaration into compliance with any statutory requirements; or,

22.7.4. To correct clerical or typographical errors in this Declaration or any exhibit hereto or any supplement or amendment thereto.

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

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

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

Section 26. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the By-Laws, and each shall be enforced to the greatest extent permitted by law.

