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First Amendment # 900682
Misc Bk. 255 Pgs. 650-652
Jim Fielder, Recorder 1/13/99

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Jim Fielder
RECORDER MONROE CO., IN

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
BAYBERRY AT WINSLOW FARM

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS made this 15 day of August, 1997, by Winger/Stolberg Homes, Inc.

RECITALS

- (A) Declarant is the sole owner of the fee simple title to the Real Estate; and
- (B) Declarant has or will improve the Real Estate by constructing two (2) story Townhomes and first and second floor flats, totalling 69 Living Areas upon the Real Estate in accordance with the Floor Plans prepared by Gary Weaver & Associates, Inc.; and,
- (C) Declarant has completed the first phase of the Project; and
- (D) Declarant intends to sell the individual Living Areas together with portion of the Common Areas to be governed by the provisions of the Act.

NOW, THEREFORE, Declarant declares that Bayberry at Winslow Farm 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 Condominium Unit within the Project.

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

- 1.1 Act.
"Act" means the "Indiana Horizontal Property Law" as amended.
- 1.2 Association.
"Association" means The Bayberry Homeowners' Association, Inc., its successors and assigns, an Indiana nonprofit corporation which is the incorporated Association of Co-Owners, more particularly described in Section 9.
- 1.3 Board of Directors.
"Board of Directors" means the governing body of the Association elected by the Co-Owners in accordance with the Bylaws.
- 1.4 Building.
"Building" means the multifamily structures designated by Letter A through R in the Floor Plans.

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1.5 Bylaws

"Bylaws" means the Bylaws of the Association, providing for the administration and management of the Association, including a prohibition on the rental of any Condominium Unit by a Co-Owner except in the case of hardship as determined by the Board of Directors. A true copy of the Bylaws is attached to this Declaration as Exhibit A and incorporated herein by reference.

1.6 Common Area.

"Common Area" means the Real Estate and Buildings exclusive of the Living Spaces which are designated as such on any recorded Floor Plans of the Project including but not limited to the mechanical areas serving the Buildings, interior hallways not part of a designated Living Area, parking areas, private roads, exterior landscaped areas (including the landscaping buffer of white pines), the decorative walls constructed by the Declarant and the exterior sidewalks and other exterior walks.

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 Co-Owners; provided, however, that Common Expenses shall not include any costs of initial construction of any Condominium Unit.

1.8 Conservancy Area.

"Conservancy Area" means the land designated as the Conservancy Area on the Plat which shall be transferred to the Association by the Declarant. No development shall occur in the Conservancy Area.

1.9 Co-Owners.

"Co-Owners" means all of the Owners of all the Condominium Units in the Project.

1.10 Declarant.

"Declarant" means Winger/Stolberg Homes, Inc., an Indiana business corporation, developer of the Project, and any successor or assignee of its interest in all or part of the Project 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.

1.11 Delinquency Date.

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

1.12 Developer.

"Developer" means Declarant. Both words are used interchangeably in this Declaration and in the Bylaws.

1.13 Condominium Unit.

"Condominium Unit" means separately designated and legally described freehold estates consisting of the Living Area and the respective 1/69 undivided interest in the Common Areas.

1.14 Living Area.

"Living Area" means the separately designated and legally described freehold estates consisting of the space or area contained within the perimeter walls of each of the Condominium Units constructed in the Project as depicted on the Floor Plans, including the garages of each Unit.

1.15 Limited Common Area.

"Limited Common Area" means that portion of the Common Area identified on the Floor Plan which is assigned to a single Owner for the Owner's exclusive use. Limited Common Areas include driveways, patios and decks which are appurtenant to a Condominium Unit.

1.16 Mortgagee.

"Mortgagee" means the holder of any recorded first mortgage lien on any Condominium Unit.

1.17 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 Condominium Unit; provided, that persons or entities owning a Condominium Unit 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.

1.18 Floor Plans.

"Floor Plans" means the Floor Plans prepared by Gary Weaver & Associates, Inc., said Floor Plans being on record in the Office of the Recorder of Monroe County, Indiana, as document number _____ in Horizontal Property Record HB, pages 144.

1.19 Private Roads.

"Private Roads" means all of the internal streets in the Project which shall be part of the Common Area.

1.20 Project.

"Project" means Bayberry at Winslow Farm.

1.21 Property.

"Property" means the Common Areas, Conservancy Areas, Limited Common Areas, Condominium Units, Private Roads 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 the Project.

1.22 Real Estate.

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

Section 2. Declaration. Declarant hereby expressly declares that the Real Estate shall be held, conveyed and transferred in accordance with the provisions of this Declaration and subject to the provisions of the Act for the mutual benefit of all Owners of the Condominium Units.

Section 3. Description of Bayberry at Winslow Farm. Bayberry at Winslow Farm consists of sixty-nine (69) Condominium Units designated by unit number in Building Letter A through R, inclusive, together with the Common Area and the Conservancy Area. The size of the Living Areas are as designated on the Plat. The legal description for each Condominium Unit in Bayberry shall be as follows:

Condominium Unit _____, Building ___ in Bayberry at Winslow Farm, a horizontal property condominium in Monroe County, Indiana, as defined in the Floor Plans, and recorded as Instrument Number ___ in Horizontal Property Record ___, pages _____ in the Office of the Recorder of Monroe County, Indiana together with an undivided 1/69 interest in the Common Areas.

Section 4. Living Areas and Easements. The boundaries of each Living Area in the Project shall be as shown on the Floor Plans, provided, however, in the event any vertical boundary line of any Living Area does not coincide with the actual Living Area 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 Living Area in and to such base line outside the actual boundary line of the Living Area.

Section 5. Ownership of Common Area, Private Roads and Conservancy Area. The Owner of each Condominium Unit is entitled to an undivided interest of an equal 1/69 in the Common Areas. The undivided interests established and to be conveyed with the respective Condominium Units cannot be changed except upon agreement of all the Owners and the recording of an amendment hereof, duly signed and acknowledged. Declarant, its successors, assigns, and grantees, covenant and agree that the undivided interests in the Common Areas and the fee titles to the respective Condominium Units conveyed shall not be separated or separately conveyed, and that each undivided interest shall be deemed to be conveyed or encumbered with its respective Condominium Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Condominium Unit. Nothing in this Section impairs the right of the Association to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Section 10.

The Private Roads are part of the Common Area. The Private Roads shall be maintained and repaired by the Association for the benefit of all the Owners and the cost of maintenance, repair, replacement and snow removal shall be a Common Expense. The Private Road is subject to an easement for ingress, egress and utilities as more specifically described in Section 8.

Each Owner shall have the exclusive use of any Limited Common Area appurtenant to that Owner's Condominium Unit as depicted on the Floor Plans. Such Limited Common Areas include the decks, patios and driveways appurtenant to each Living Unit.

The Conservancy Area shall be conveyed by the Declarant to the Association which shall hold simple title to the Conservancy Area. No development shall occur in the Conservancy Area. The Association may make reasonable rules and regulations applicable to the use of the Conservancy Area.

Section 6. 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 contract purchasers or his invitees who reside in any Condominium Unit.

Section 7. 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 Living Area, 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 Co-Owners to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities, if any, located in any other Condominium Units or in the Common Area and serving the Owner's Condominium Unit.

Section 8. 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 Private Road and other portions of the Common Area in the performance of their duties. An easement is also granted to all utilities, including the City of Bloomington, Indiana, 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 Floor Plans 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 on, above, across and under the roofs and exterior walls of the Condominium Units. 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 Association, its officers, agents and employees and to any management company, if any, selected by the Association to enter in or to cross over the Common Area to perform its duties.

Section 9. 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 nonprofit corporation which shall be known as Bayberry 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 Condominium Unit 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 three classes of Members:

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

9.2 Class B. The Class B Member shall be Declarant and Declarant shall be entitled to ten (10) votes for each Condominium Unit owned. The Class B Membership shall cease and terminate upon the first to occur of: (1) the date upon which the written resignation of the Class B Member as such is delivered to the Resident Agent of the Association, provided, however, if Declarant, at such time still owns Condominium Units, such membership shall be converted to a Class A Membership; (2) the date Declarant no longer owns any Condominium Units; or (3) January 1, 2001 (the applicable date of the above being herein referred to as the "Applicable Date").

9.3 Class C. Any and all natural persons who are officers, directors, partners, employees, or appointees of a Class A Member or a Class B Member may become a Class C Member of the Association upon designation thereof by a Class A Member or a Class B Member. A Class C Member shall have no vote as an Owner in matters of the Association, but, upon appointment by the Declarant or upon election by the Co-Owners as provided in the Bylaws, may act as a director and may vote in such capacity on matters which are determined by the Board of Directors.

The initial Board of Directors shall be as designated in the Association's Articles of Incorporation, shall be Class C Members, and such Directors, notwithstanding any provision in this Declaration or the Articles or the Bylaws to the contrary, shall be Directors until the Applicable Date and in the event of any vacancy or vacancies occurring 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. Thereafter, the Members of the Association shall elect a Board of Directors annually in accordance with and as prescribed by the Bylaws. The Association Members shall be entitled to vote for the election of the Board of Directors in accordance with the procedure outlined in the Bylaws. The Board of Directors shall be the governing body of the Association representing all of the Association 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.

Section 10. 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 11. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Condominium Unit. In the event that for any year the real estate taxes are not separately assessed and taxed to each Condominium Unit, but are assessed and taxed on the Real Estate as a whole, without a breakdown for each Condominium Unit, then each Owner shall pay one-sixty-ninth of the real estate taxes assessed to the land and improvements comprising the Real Estate assessed as a whole.

Section 12. Utilities. Each Owner shall, pay for the Owner's own utilities which are separately metered (including any public utilities which are privately metered). Utilities which are not separately metered shall be treated as and paid as part of the Common Expenses, unless otherwise determined by the Association.

Section 13. Maintenance, Repairs and Replacements. Each Owner shall at his expense be responsible for the maintenance, repairs, decoration and replacement within his own Living Area except as may otherwise be provided herein. All fixtures and equipment installed within the Living Area commencing at a point where

the utility lines, pipes, wires, conduits or systems enter the exterior walls of the Living Area shall be maintained and kept in repair by the Owner thereof. Each Owner shall promptly perform all maintenance and repair in his Living Area, which if neglected, might adversely affect any Living Area or 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 Living Area. The Association shall have the irrevocable right, to be exercised by the manager or the Board of Directors, to have access to each Living Area from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Areas, and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Areas, and facilities or to another Living Area. 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 and Limited Common Area, the Association shall provide exterior maintenance upon each Living Area 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 patio which shall be the sole responsibility of the Owner. The Association shall also maintain any trees, shrubs, grass or walks which the Association originally planted or installed and any other exterior landscaping.

In the event 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 Living Area, 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 Living Area 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 Living Area for purposes of inspection of the Common Area or Limited Common Area appurtenant thereto, and replacement, repair and maintenance of the same.

Section 14. Alterations, Additions and Improvements. 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 or jeopardizes the soundness or safety of the Property, reduces the value thereof or impairs any easement or hereditament of any Condominium Unit located thereon from its natural or improved state existing on the date such Condominium Unit was first conveyed by Declarant to the Owner without the prior written consent of all of the other Co-Owners.

Section 15. Assessments. Regular and Special Assessments shall be determined and collected as follows:

15.1 **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 for the following year, 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. The annual accounting shall be mailed or delivered to each Owner at the same time as the Notice of annual meeting is mailed or delivered.

15.2 **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 Co-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 Co-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 Co-Owners present or represented at the meeting (provided a quorum is present); provided, however, in no event shall the annual meeting of the Co-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.

15.3 Regular Assessments. The annual budget as adopted shall contain a proposed assessment against each Condominium Unit based on the total amount of said budget divided by the total number of Condominium Units provided that no Condominium Unit shall be assessed nor will any Condominium Unit be counted in determining any amounts assessed that is owned by the Declarant unless such Unit is finished, ready for occupancy, or has been transferred by Declarant to a third party (herein called the "Regular Assessment"). However, Condominium Units owned by the Declarant shall not be exempt from the Regular Assessment after the first day of the twenty-fourth calendar month following the month in which the closing of the sale of the first Condominium Unit occurs unless modified by the Board of Directors. The Regular Assessment against each such Condominium Unit 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 Regular Assessments 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 Condominium Unit as of the date of the adoption of the annual budget.

15.4 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 Co-Owners at a meeting duly called for this purpose. Each Owner, subject to the Regular Assessment as described in 15.3 above, 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 Condominium Units subject to the Regular Assessment in the Project. 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 date thereof.

15.5 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 Co-Owners proportionately as the Board of Directors shall elect.

15.6 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 Bylaws; provided, however, that said preceding budget and Regular Assessments may be increased by up to fifteen percent (15%) as the Board of Directors, by majority vote, may deem necessary.

15.7 Reserve and Working Capital 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. 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. In addition to the reserve fund, a working capital fund shall be established and maintained by the Association. At the closing of the initial sale of each Condominium Unit to an Owner, the purchaser of such Condominium Unit shall deposit with the Association an amount equal to the monthly Regular Assessment pro-rated to the day of closing (based on a 365 day year) plus the sum of Fifty Dollars (\$50.00). Amounts paid or deposited into the working capital fund shall not relieve an Owner from responsibility for the Regular Assessments due in accordance with this Section 15. All amounts held by the Association pursuant to this Section 15.7 shall be maintained in a federally-insured, interest-bearing account in a bank or savings and loan association doing business in Monroe County, Indiana, and all interest thereon shall be added to and deemed a part of such fund.

15.8 Status of Funds Collected by Association. All funds collected pursuant to this Section 15 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 Co-Owners for the payment of Common Expenses.

15.9 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 Condominium Units 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 interest-bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Monroe County, Indiana, selected from time to time by the Board of Directors.

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

Unit, then the Owner and any occupant of the Condominium Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Condominium Unit and the Board of Directors shall be entitled to the appointment of a receiver for the purpose of preserving the Condominium Unit 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.

15.11 Priority of Assessment Lien. Notwithstanding anything contained in this Declaration, the Association's Articles of Incorporation or the Bylaws, no sale or transfer of Condominium Units 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.

15.12 Notice of Assessments. Upon ten (10) days written notice to the Association and the payment of a reasonable fee, the Association shall deliver to any Owner, Mortgagee, prospective Mortgagee, title insurance company, purchaser or other prospective transferee of a Condominium Unit, a written statement setting forth the amount of all unpaid Assessments, if any, with respect to the subject Condominium Unit, together with the amount of the current assessments for Common Expenses and the date(s) such Assessments become due and payable. Any such written statement shall be binding upon the Association in favor of any person relying thereon in good faith.

Section 16. Insurance. The Board of Directors of the Association shall obtain fire and extended coverage insurance for each Condominium Unit in an amount equal to the full replacement cost thereof. The Board of Directors shall determine the company or companies through which the insurance for the Condominium Units shall be obtained. Such insurance coverage shall be for the benefit of each Owner, and if applicable the Owner's Mortgagee, provided however, in the event of damage or destruction by fire or other casualty to any Condominium Unit, the Owner and Mortgagee thereof shall use such insurance proceeds to cause the Condominium Unit to be promptly repaired and restored.

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 Condominium Unit 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 Condominium Units, 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.

When any policy of insurance has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes or termination thereof shall be promptly furnished by the Board of Directors to each Owner or mortgagee whose interest may be affected.

The Owners through the Association shall purchase a master casualty policy affording fire and extended coverage in an amount consonant with the full replacement value of the improvement that in whole or in part comprise the Common Areas and facilities paid as part of the Common Expenses. The Co-Owners, through the Association, shall also purchase a master liability policy in an amount required by the Bylaws or this Declaration or revised from time to time by a decision of the Board of Directors of the Association, which policy shall cover the Association, the Managing Agent, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Project, all Condominium Unit's Owners and all other persons entitled to occupy any Condominium Unit or other portions of the Project. Such other policies as may

be required by this Declaration may be obtained by the Owners through the Association including, without limitation, worker's compensation insurance, liability insurance on motor vehicles owned by the Association, and specialized policies covering land or improvements on which the Association has or shares ownership or other rights and officers' and directors' liability policies. The premium for the insurance obtained by the Association shall be paid by the Association as part of the Common Expenses.

Section 17. Casualty and Restoration. In the event fire or any other casualty or disaster, other than complete destruction of the Building containing the Living Areas, the Co-Owners thereof shall cause the improvements to be reconstructed and the insurance proceeds applied to reconstruct the improvements. In the event insurance proceeds are inadequate to cover the costs of reconstruction or in the event there are no proceeds, the Owners of the Living Areas directly affected by the damage shall pay the cost for restoring the Living Areas. A Living Area shall be deemed directly affected if and only if a part of such Living Area, including but not limited to, any party wall of such Living Area, is damaged or destroyed. If any Owner fails or refuses to reconstruct his Living Area 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 Condominium Unit and subject to foreclosure in the same manner as provided for a lien for Common Expenses.

The restoration referred to in this Section 17 shall include the costs of construction incurred rebuilding the Condominium Units in the same condition as they existed immediately prior to the destruction or damage and with the same type of architecture.

In the event the Association has insurance proceeds which are to be not required for reconstruction and repair, the Association shall retain the excess proceeds and shall use the additional funds to reduce future assessments as determined by the Board of Directors. In no event shall remittances of excess proceeds be made directly to the Owner.

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. Such Special Assessment shall constitute a lien from the time the Assessment is made.

Section 18. Covenants and Restrictions. The following covenants and restrictions on the use and enjoyment of the Living Areas, Condominium Units, Buildings, 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. Present or future Owners 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:

18.1. All Condominium Units shall be used exclusively for residential purposes and the occupancy as a private dwelling for the Owner, the Owner's family, the Owner's tenants and social guests and for no other purpose.

18.2. No additional buildings shall be erected or located on the Property other than shown in the Floor Plans.

18.3. Nothing shall be done or kept in any Living Area or in the Common Area which will

cause an increase in the rate of insurance on the Building or the contents thereof. No Owner shall permit anything to be done or kept in his Living Area or in the Common Area which will result in the cancellation of insurance on the Building or contents thereof, or which would be in violation of any law or ordinance.

18.4 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 the Building, and no sign, awning, canopy, shutter or radio or television antennae, (including but not limited to any DSS satellite dish or the equivalent) or other attachment or things shall be affixed to or placed upon the exterior walls or roofs, or on any parts of any Building without the prior written consent of the Board of Directors.

18.5 No advertising signs (except one "for sale" sign per Condominium Unit of not more than five square feet), unsightly objects or nuisances shall be erected, placed or permitted to remain on any Living Area or Common Area, nor shall any Living Area, or Common Area be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any other Living Area or any resident thereof, including, without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loudspeakers, electrical equipment, amplifiers or other equipment or machines. Notwithstanding any provision in this Section or elsewhere in this Declaration or the Bylaws, Declarant may maintain on the Property during the period of construction and sale of the Condominium Units on the Real Estate such facilities as Declarant in its sole discretion deems necessary for the construction and sale of the Condominium Units including but not limited to a business office, storage area, construction yards, signs, model units, construction office, sales office, management offices, and business offices. At no time shall facilities so used and maintained by Declarant be or become part of the Common Area unless so designated by Declarant and Declarant shall have the right to remove the same from the Property at any time.

18.6 No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed from any Living Area or where they are visible to other Owners or the public, nor shall any such items be hung out or exposed on any part of the Common Area. All Living Areas 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.

18.7 No home-based business, industry, trade or any commercial or religious or educational activity, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Property without first obtaining the written consent of the Board of Directors; provided, however, that this prohibition shall not apply to the business activities, if any, of Declarant, his agents or assigns during the construction and sale period, or of the Association, its successors and assigns, acting in furtherance of its powers and purposes.

18.8 All Owners and members of their families, guests or invitees, and all occupants of any Living Area 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.

18.9 No boats, campers, trailers of any kind, buses, mobile homes, trucks (except pick-up trucks) or any other unconventional vehicles of any description shall be permitted, parked, or stored anywhere within the Property except as expressly designated by the Board of Directors in each instance.

18.10 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 or the Managing Agent.

18.11 No animals of any kind shall be raised, bred, or kept in any Living Area, or any portion of the Common Area except that customary household pets may be kept in a Condominium Unit, provided that such pet is not kept, bred, or maintained for a commercial purpose, and does not create a nuisance. Pets shall be permitted outdoors only under leash and accompanied by an Owner or other person, and an Owner shall be fully liable for any injury or damage to any person caused by his pet, and shall be responsible for removing from such areas his pet's waste materials. The Board of Directors may adopt such other rules and regulations regarding pets as it may deem appropriate and in the event that in the judgment of the Board of Directors any pet is causing or creating a nuisance or unreasonable disturbance or noise, such pet shall permanently be removed from the Property upon written notice of such determination by a majority of the Board of Directors.

Section 19. Unpaid Assessments. In a voluntary conveyance the grantee of a Condominium Unit shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Managing Agent or Board of Directors, as the case may be, setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the Condominium Unit conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth.

All sums assessed by the Association but unpaid for the share of the Common Expenses chargeable to any Condominium Unit shall constitute a lien from the time of assessment on such unit prior to all other liens except tax liens on the Condominium Unit in favor of any assessing unit and special district. Such lien may be filed and foreclosed by suit by the Managing Agent or Board of Directors, acting on behalf of the Association, under the laws of the State of Indiana governing mechanic's and materialmen's liens. In any such foreclosure, the Condominium Unit Owner shall be required to pay a reasonable rental for the Condominium Unit as provided in the Bylaws, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. The Managing Agent, acting on behalf of the Association, shall have power to bid on the Condominium Unit at foreclosure sale, and to acquire and hold, mortgage, and convey the same. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or having the lien securing the same.

Where the Mortgage or other purchaser of a Condominium Unit obtains title to the unit as a result of foreclosure of the first mortgage to the fullest extent allowed by law, such acquirer of title, his successors and assigns, shall be liable for the share of the Common Expenses or assessment by the Association chargeable to such Condominium Unit which became due before the acquisition of title to such Condominium Unit by such acquirer.

Section 20. Notice to Association. Any Owner who places a first mortgage lien upon his Condominium Unit 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 Bylaws, 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 Bylaws 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 Bylaws, 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 Bylaws which

Is not cured within sixty (60) days.

Section 21. Amendment of Declaration. Except as otherwise provided in this Declaration amendments to this Declaration shall be proposed and adopted in the following manner:

21.1 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.

21.2 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 Co-Owners.

21.3 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 Bylaws.

21.4 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 Condominium Unit 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.

21.5 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 16 of this Declaration with respect to casualty insurance to be maintained by the Association; or (3) provisions of Section 17 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 15 of this Declaration with respect to the assessments on any Condominium Unit, without in each and any of such circumstances, the unanimous approval of all Co-Owners and all Mortgagees.

21.6 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.

21.7 Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in the Articles or in the Bylaws, 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:

21.7.1 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,

21.7.2 To induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Condominium Units; or,

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

21.7.4 To correct clerical or typographical errors in this Declaration or any exhibit hereto or any supplement or amendment thereto; or,

21.7.5 To make any other changes deemed necessary by Developer in the exercise of Developer's sole discretion.

Section 22. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Condominium Units shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the Bylaws 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 Condominium Unit shall constitute an agreement that the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and rules and regulations, as each may be amended from time to time, are accepted and ratified by such Owner, 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 any Condominium Unit 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 Condominium Unit or any part of the Property in any manner shall be subject to this Declaration, the Articles of Incorporation, the Bylaws, and the rules and regulations applicable thereto as each may be amended from time to time. Each Owner agrees to execute and deliver such documents necessary or desirable to cause the provisions of this Section to comply with the Act as it may be amended from time to time.

Section 23. 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 occupants 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 Living Area or its appurtenances or of the Common Area.

Section 24. 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 Living Area.

Section 25. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Association's Articles of Incorporation or the Bylaws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Association's Articles of Incorporation, or the Bylaws, and each shall be enforced to the greatest extent permitted by law.

Section 26. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to include all genders. The singular shall include and refer to the plural and vice versa as appropriate.

Section 27. Interpretation. The captions and titles of the various articles, sections, sub-sections, paragraphs and sub-paragraphs of this Declaration are inserted herein for ease and convenience of reference only and shall not be used as an aid in interpreting or construing this Declaration or any provision hereof.

Section 28. The Floor Plans. The Floor Plans of Bayberry at Winslow Farm, Phase I is incorporated into this Declaration by reference and has been filed in the Office of the Recorder of Monroe County, Indiana, as of the 24th day of October, 1997.

Section 29. Phases. Each Building depicted in the Floor Plans shall constitute a separate Phase of Bayberry at Winslow Farm and may be platted by Declarant separately. As each Phase is subjected to the terms of this Declaration, the ownership of the Common Areas shall be adjusted so that each Co-Owner of all the then-platted Condominium Units owns an equal share of all Common Areas which have been subjected to this Declaration. Grantor reserves the right to create easements within the platted Common Areas to benefit the additional Phases. Any additions shall be effective upon recording the Floor Plans for the additional Phases.

STATE OF INDIANA
OFFICE OF THE SECRETARY OF STATE

CERTIFICATE OF INCORPORATION


OF

BAYBERRY HOMEOWNERS' ASSOCIATION, INC.

I, SUE ANNE GIROY, 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 August 20, 1997.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this Twentieth day of August, 1997.


Deputy

1997081229

ARTICLES OF INCORPORATION
OF
BAYBERRY HOMEOWNERS' ASSOCIATION, INC.

APPROVED
AND
FILED
IND. SECRETARY OF STATE

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.

RECORDED
INDEXED
AUG 13 1997
MONROE COUNTY, INDIANA

ARTICLE ONE

Name

The name of the Corporation is "Bayberry Homeowners' Association, Inc."

ARTICLE TWO

Purposes and Powers

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

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

- (a) 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, the Conservancy Area and the Limited Common Area within that certain tract of property described in the Declaration of Bayberry at Winslow Farm recorded in the Office of the Recorder of Monroe County, Indiana ("Declaration")
- (b) Solely in furtherance of the aforesaid purposes, to transact any and all

lawful business for which corporations may be incorporated under the Act, provided such business is not inconsistent with the Corporation being organized and operated exclusively for the purposes indicated herein.

Section 2.2 Non-Profit Purposes.

(a) 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

(b) 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 2.3. 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:

(a) 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;

(b) 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;

(c) 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;

(d) 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 2.4 Limitation on Powers.

(a) The Corporation shall not issue capital stock.

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

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

(d) 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 THREE

Term of Existence

The Corporation shall have perpetual existence.

ARTICLE FOUR

Resident Agent and Principal Office

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

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

ARTICLE FIVE

Membership

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

(a) 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.

(b) 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 Condominium Unit on January 1, 2001.

(c) Class "C" Members. Any and all natural persons who are officers, directors, partners, employees, or appointees of a Class "A" Member or a Class "B" Member may become a Class "C" Member of the Corporation upon designation thereof by a Class "A" Member or the Class "B" Member.

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

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

(a) Number of Votes. Class "A" Members shall be entitled to one (1) vote for each Condominium Unit owned. Class "B" Members shall be entitled to ten (10) votes for each Condominium Unit owned. Class "C" Members shall have no vote in matters of the Corporation, but may act as a director and may vote in such capacity on matters which are determined by the Board of Directors. After all Members present (in person or by proxy) have cast their votes, the total number of votes for or against any matter shall then be divided either by the total number of votes cast to determine the respective proportions of Members who support or oppose such matter, or by the number of

Members which are present or represented at such meeting to determine the respective proportions of Members present or represented at such meeting who support or oppose such matter.

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

(c) Voting by Corporation or Trust. Where a corporation or trust is an Owner of a Condominium Unit 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.

(d) 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.

(e) Quorum. Except where otherwise expressly provided in the Declaration, these Articles, the Bylaws, or the Act, the presence of a majority of the Owners or their duly authorized representatives shall constitute a quorum at all meetings. The terms "majority of Owners" and "majority of the vote," as used in these Articles, shall mean, unless otherwise expressly indicated, more than fifty percent (50%) of the total vote of all Owners as determined by the applicable provisions set forth in the Declaration, and shall not mean a majority of the persons or votes present or represented at such meeting.

(f) 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 Condominium Unit. Persons or entities owning a single Condominium Unit as tenants in common, joint tenants, or tenants by the entireties shall be deemed one Owner.

ARTICLE SIX

Board of Directors

Section 6.1 Number. The initial Board of Directors shall consist of three (3) directors.

The exact number of directors shall be specified from time to time by the Bylaws of the

Corporation. The minimum number of directors so specified shall be two (2) and the maximum number shall be five (5). Whenever the Bylaws do not specify the number of directors, the number shall be three (3).

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

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

<u>Name</u>	<u>Address</u>
H. Timothy Winger, Sr.	501 Woodcrest Drive Bloomington, IN 47401
Eric C. Stolberg	501 Woodcrest Drive Bloomington, IN 47401
Timothy H. Winger, Jr.	501 Woodcrest Drive Bloomington, IN 47407

ARTICLE SEVEN

Names and Addresses of Incorporators

The names and addresses of the incorporators of the Corporation are:

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

ARTICLE EIGHT

Statement of Property

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

ARTICLE NINE

Provisions for Regulation and Conduct of the Affairs of the Corporation

Section 9.1 Directors; Amendment of Articles. Other provisions, consistent with the laws of the State of Indiana, for the regulation and conduct of the affairs of the Corporation, and creating, defining, limiting or regulating the powers of the Corporation, the directors or the Owners are as follows:

(a) 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.

(b) 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, if any.

Section 9.2 Place of Meeting. Meetings of the Owners and of the Board of Directors of the Corporation shall be held at such places within the State of Indiana, as shall be specified

in the respective calls and notices or waivers of notice of such meetings given in accordance with the Bylaws of the Corporation.

Section 9.3 Indemnification.

(a) 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.

(b) 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(a) 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).

(c) Except as provided in Section 9.3(b) above, any indemnification under Section 9.3(a) 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(a). 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.

(d) 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 bylaw, 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.

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

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

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

Section 9.6 Powers of the Board of Directors. Subject to any limitation or restriction

imposed by law or by these Articles of Incorporation, the Board of Directors of the Corporation is hereby authorized to exercise, in furtherance of the purposes of the Corporation, all the powers of the Corporation without authorization or approval of the 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 19 day of August, 1997.

H. Timothy Winger, Sr.
H. Timothy Winger, Sr.

Eric C. Stolberg
Eric C. Stolberg

Timothy H. Winger, Jr.
Timothy H. Winger, Jr.

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

H. Timothy Winger, Sr., Eric C. Stolberg and Timothy H. Winger, Jr. personally appeared before me, a Notary Public, in and for said County and State on the 19 day of August, 1997, 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: 9-6-98
County of Residence: Monroe

Bernadette C. Melski
Notary Public
BERNADETTE C. MELSKI
(Name Printed)

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