

ARTICLES OF INCORPORATION
OF
BAYBERRY HOMEOWNERS' ASSOCIATION, INC.

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

ARTICLE ONE

Name

The name of the Corporation is "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
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