

Michigan Department of Consumer and Industry Services

Filing Endorsement

This is to Certify that the ARTICLES OF INCORPORATION - NONPROFIT

for

WINDING CREEK HOMEOWNERS ASSOCIATION

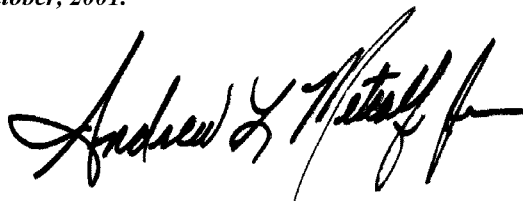
ID NUMBER: 764382

received by facsimile transmission on October 26, 2001 is hereby endorsed

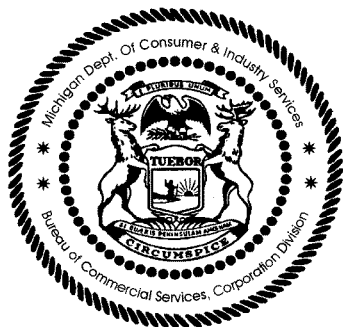
Filed on October 29, 2001 by the Administrator.

The document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Department, in the City of Lansing, this 29th day of October, 2001.



, Director



Bureau of Commercial Services

BCS/CD-502 (Rev.08/01)

MICHIGAN DEPARTMENT OF CONSUMER & INDUSTRY SERVICES BUREAU OF COMMERCIAL SERVICES		
Date Received	(FOR BUREAU USE ONLY)	
	This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.	
Name Clark G. Doughty, Esq. - Bodman, Longley & Dahling LLP		
Address 100 Renaissance Center, 34th Floor		
City	State	Zip Code
Detroit	MI	48243
		EFFECTIVE DATE:

Document will be returned to the name address you enter above.
If left blank document will be mailed to the registered office.

ARTICLES OF INCORPORATION
For use by Domestic Nonprofit Corporations
(Please read information and instructions on the last page)

Pursuant to the provisions of Act 162, Public Acts of 1982, the undersigned corporation executes the following Articles:

ARTICLE I

The name of the corporation is: Winding Creek Homeowners Association

ARTICLE II

The purpose or purposes for which the corporation is organized are:
See attached rider.

ARTICLE III

- The corporation is organized upon a Nonstock basis.
(Stock or Nonstock)
- If organized on a stock basis, the total number of shares which the corporation has authority to issue is N/A. If the shares are, or are to be, divided into classes, the designation of each class, the number of shares in each class, and the relative rights, preferences and limitations of the shares of each class are as follows:

ARTICLE III (cont.)

3. a. If organized on a nonstock basis, the description and value of its real property assets are: (if none, insert "none")

None

b. The description and value of its personal property assets are: (if none, insert "none")

None

c. The corporation is to be financed under the following general plan:

Assessment of the Members

d. The corporation is organized on a Membership basis.
(Membership of Directorship)

ARTICLE IV

1. The address of the registered office is:

26622 Woodward, Suite 110 Royal Oak, Michigan 48067
(Street Address) (City) (Zip Code)

2. The mailing address of the registered office, if different than above:

_____, Michigan _____
(Street Address or P.O. Box) (City) (Zip Code)

3. The name of the resident agent at the registered office is:
Peter J. Keane

ARTICLE V

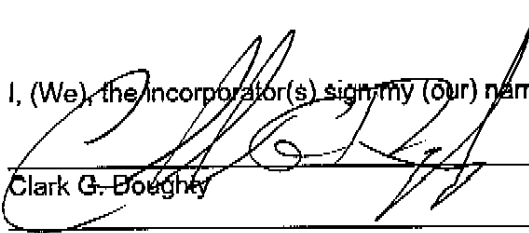
The name(s) and address(es) of the incorporator(s) is (are) as follows:

Name	Residence or Business Address:
<u>Clark G. Doughty</u>	<u>Bodman, Longley & Dahling LLP</u>
	<u>100 Renaissance Center, 34th Floor, Detroit, MI 48243</u>
_____	_____
_____	_____
_____	_____
_____	_____

Use space below for additional Articles or for continuation of previous Articles. Please identify any Article being continued or added. Attach additional pages if needed.

- Article II – see attached rider.
- Article VI – see attached rider.
- Article VII – see attached rider.
- Article VIII – see attached rider.
- Article IX – see attached rider.
- Article X – see attached rider.
- Article XI – see attached rider.
- Article XII – see attached rider.

I, (We), the incorporator(s) sign my (our) name(s) this 25th day of October, 2001



 Clark G. Doeghey

RIDER TO ARTICLES OF INCORPORATION

ARTICLE II -

Winding Creek Homeowners Association (the "Association") is being formed for the following general purposes which are not intended to create profit for the Members of the Association:

- (a) To manage and administer the affairs of and to maintain the Association;
- (b) To fix, levy and collect assessments against and from the Members of the Association and to use the proceeds for the purposes set forth in the Declaration Of Covenants, Conditions And Restrictions for Winding Creek (the "Subdivision") recorded in the Macomb County Records, as may be amended from time to time as therein provided (the "Declaration");
- (c) To carry insurance and to collect and allocate the proceeds thereof;
- (d) To repair and rebuild improvements owned by the Association after casualty;
- (e) To maintain and repair all Common Areas within the Subdivision, including without limitation, the Stormwater Drainage Facilities, Entrance Way, Landscaping and Perimeter Improvements, and the Irrigation Improvements in accordance with, and as such terms are defined in, the Declaration;
- (f) To contract for the management, operation, maintenance and administration of the Subdivision and the Association;
- (g) To make and enforce reasonable regulations concerning the use and enjoyment of the Common Areas in the Subdivision;
- (h) To acquire, own, maintain and improve, and to buy, sell, convey, assign or mortgage any real and personal property, including but not limited to any Lot in the Subdivision, any easements or licenses or any other real property, whether or not contiguous to the Subdivision, for the purpose of providing benefit to the Members of the Association and furthering any of the purposes of the Association;
- (i) To borrow money and issue evidences of indebtedness in order to accomplish the Association's purposes and to secure any indebtedness by mortgage, pledge or other lien;
- (j) To enforce the provisions of the Declaration and of these Articles of Incorporation and such Bylaws and Rules and Regulations of the Association as may be adopted;
- (k) To make and perform any contract and to exercise all powers necessary, incidental or convenient to the administration, management, maintenance, repair, replacement and operation of the Subdivision.

ARTICLE VI -

The term of corporate existence is perpetual.

ARTICLE VII -

The qualifications of Members, the manner of their admission to the Association, the termination of membership, and voting by such Members shall be as follows:

- (a) The Developer of the Subdivision and each owner of a Lot shall be Members of the Association and no other person or entity shall be a Member.
- (b) Membership in the Association shall be established by acquiring a land contract vendee's interest or fee simple title to a Lot in the Subdivision and by recording with the Register of Deeds of the county where the Lot is located a deed, memorandum of land contract or other instrument establishing a change of record title to the Lot and the furnishing of evidence of same satisfactory to the Association. The new Lot owner or land contract vendee, whichever is applicable, will become a Member of the Association, and the prior owner's membership will terminate. The Developer's membership shall continue until the Developer no longer owns any Lot in the Subdivision.
- (c) The Association shall have two (2) classes of Voting Members, which are as follows:
 - (1) Class A Members shall consist of all owners of Lots other than Developer. Each Class A Member shall be entitled to one vote on each matter submitted to a vote of Members for each Lot owned by the Class A Member. Where title to a Lot is held by more than one person or entity, all such persons or entities shall be Members and jointly shall be entitled to only one vote per Lot. Where a Lot has been sold pursuant to a land contract, the purchaser under said land contract shall be entitled to the vote for said Lot. Multiple Owners (including co-purchasers under a land contract) may exercise one vote per Lot as they may mutually agree, and such co-owners or co-purchasers shall notify the Association in writing of the person entitled to exercise such vote. In the event any multiple Owners fail to provide such notice to the Association within thirty (30) days prior to the date set for a meeting, the Owner whose name first appears on record title shall be deemed to be the Member authorized to vote on behalf of all the multiple Owners and any vote cast in person or by proxy by said Owner, or the failure of said Owner to vote, shall be binding upon all such multiple Owners.
 - (2) Developer shall be a Class B Member. In order to assure the orderly development and maintenance of the Subdivision and the Common Areas, the Class B Member shall be entitled to three (3) votes for each Lot owned by Developer within the Subdivision. Class B membership

shall terminate as to any Lots owned by Developer at the time any such Lot is sold and conveyed to an Owner other than Developer, which Owner shall thereafter be a Class A Member.

- (d) The share of a Member in the funds and assets of the Association cannot be assigned, pledged, encumbered or transferred in any manner except as an appurtenance to his or her Lot in the Subdivision.
- (e) Voting by Members shall be in accordance with the provisions of the Bylaws of the Association and the Declaration.

ARTICLE VIII -

No volunteer director, as that term is defined in Act 162, Public Acts of 1982, as amended (the "Act"), shall be personally liable to the Association or its Members for monetary damages for breach of fiduciary duty as a director, provided that the foregoing shall not eliminate the liability of a director for any of the following: (i) breach of the director's duty of loyalty to the Association or its Members; (ii) acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; (iii) a violation of Section 551(l) of the Act; (iv) a transaction from which the director derived an improper personal benefit; or (v) an act or omission that is grossly negligent. If the Act hereafter is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Association in addition to the limitation on personal liability contained herein shall be limited to the fullest extent permitted by the amended Act. No amendment or repeal of this Article shall apply to or have any effect on the liability of and director of the corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

ARTICLE IX -

When a compromise or arrangement or a plan of reorganization of the Association is proposed between the Association and its creditors or any class of them or between the Association and its Members or any class of them, a court of equity jurisdiction within the state, on application of the Association or of a creditor or Member thereof, or on application of a receiver appointed for the Association, may order a meeting of the creditors or class of creditors or of the Members or class of Members to be affected by the proposed compromise or arrangement or reorganization, to be summoned in such manner as the court directs. If a majority in number represent 3/4 in value of the creditors or class of creditors, or of the Members or class of Members to be affected by the proposed compromise or arrangement or a reorganization, agree to a compromise or arrangement or a reorganization of the Association as a consequence of the compromise or arrangement, the compromise or arrangement and the reorganization, if sanctioned by the court to which the application has been made, shall be binding on all the creditors or class of creditors, or on all the Members or class of Members and also on the Association.

ARTICLE X -

Each person who is or was an officer of the Association or a member of the Board of Directors, and each person who serves or has served at the request of the Association as a

director, officer, partner, trustee, employee, agent or committee member of any other corporation, partnership, joint venture, trust or other enterprise shall be indemnified by the Association to the fullest extent permitted by the corporation laws of the State of Michigan as they may be in effect from time to time. The Association may purchase and maintain insurance on behalf of any such person in any such capacity or arising out of such status, whether or not the Association would have power to indemnify such person against such liability under the laws of the State of Michigan. This right of indemnification shall continue as to a person who ceases to be a director or officer, and shall inure to the benefit of the heirs, executors, and administrators of that person.

ARTICLE XI -

A. No member of the Board of Directors (the "Board") of the Association who is a Volunteer Director as that term is defined in the Michigan Nonprofit Corporation Act (the "Act"), and no officer who is a Volunteer Officer shall be personally liable to this Association or its Members for monetary damages for breach of fiduciary duty arising under the Act by such Volunteer Director or Volunteer Officer; provided, however, that this provision shall not eliminate or limit the liability of a Volunteer Director or Volunteer Officer for any of the following:

1. A breach of the director or officer's duty of loyalty to the Association;
2. Acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
3. A violation of Section 551(1) of the Act, as amended;
4. A transaction from which the director or officer derived an improper personal benefit;
5. An act or omission occurring before the effective date of this Article;
6. An act or omission that is grossly negligent.

B. The Association assumes the liability for all acts or omissions of a Volunteer Director, Volunteer Officer or other volunteer as defined in the Act occurring on or after the effective date of this provision if all of the following are met:

1. The volunteer was acting or reasonably believed he or she was acting within the scope of his or her authority;
2. The volunteer was acting in good faith.
3. The volunteer's conduct did not amount to gross negligence or willful and wanton misconduct.
4. The volunteer's conduct was not an intentional tort.

5. The volunteer's conduct was not a tort arising out of the ownership, maintenance or use of a motor vehicle as described in Section 209(e)(v) of the Act.

C. If the Act is amended after approval of this Article to authorize the further elimination or limitation of the liability of directors or officers of nonprofit corporations, then the liability of directors or officers of the Association, in addition to the limitation, elimination and assumption of personal liability contained in this Article shall be assumed by the Association or eliminated or limited to the fullest extent permitted by the Act as so amended. No amendment or repeal of this Article shall apply to or have any effect on the liability or alleged liability of a director or officer of the Association for or with respect to any acts or omissions occurring prior to the effective date of such amendment or repeal.

ARTICLE XII -

The requirements of this Article XII shall govern the Association's commencement and conduct of any civil action except for the actions to enforce the Bylaws of the Association or collect delinquent assessments. The requirements of this Article XII will ensure that the Members of the Association are fully informed regarding the prospects and likely costs of any civil action the Association proposes to engage in, as well as the ongoing status of any civil actions actually filed by the Association. These requirements are imposed in order to reduce both the cost of litigation and the risk of improvident litigation, and in order to avoid the waste of the Association's assets in litigation where reasonable and prudent alternatives to the litigation exist. Each Member of the Association shall have standing to sue to enforce the requirements of this Article XII. The following procedures and requirements apply to the Association's commencement of any civil action other than an action to enforce the Bylaws of the Association or collect delinquent assessments:

A. The Association's Board shall be responsible in the first instance for recommending to the Members that a civil action be filed, and supervising and directing any civil actions that are filed.

B. Before an attorney is engaged for purposes of filing a civil action on behalf of the Association, the Board shall call a special meeting of the Members of the Association ("litigation evaluation meeting") for the express purpose of evaluating the merits of the proposed civil action. The written notice to the Members of the date, time and place of the litigation evaluation meeting shall be sent to all Members not less than twenty (20) days before the date of the meeting and shall include the following information:

1. A certified resolution of the Board setting forth in detail the concerns of the Board giving rise to the need to file a civil action and further certifying that:

(A) It is in the best interests of the Association to file a lawsuit;

(B) At least one Board member has personally made a good faith effort to negotiate a settlement with the putative defendant(s) on behalf of the Association, without success;

(C) Litigation is the only prudent, feasible and reasonable alternative; and

(D) The Board's proposed attorney for the civil action is of the written opinion that the litigation is the Association's most reasonable and prudent alternative.'

2. A written summary of the relevant experience of the attorney ("litigation attorney") the Board recommends be retained to represent the Association in the proposed civil action, including the following information:

(A) The number of years the litigation attorney has practiced law; and

(B) The name and address of every condominium and homeowner association for which the attorney has filed a civil action in any court, together with the case number, county and court in which each civil action was filed.

3. The litigation attorney's written estimate of the amount of the Association's likely recovery in the proposed lawsuit, net of legal fees, court costs, expert witness fees and all other expenses expected to be incurred in the litigation.

4. The litigation attorney's written estimate of the cost of the civil action through a trial on the merits of the case ("total estimated cost"). The total estimated cost of the civil action shall include the litigation attorney's expected fees, court costs, expert witness fees, and all other expenses expected to be incurred in the civil action.

5. The litigation attorney's proposed written fee agreement.

6. The amount to be specially assessed against each lot in the Subdivision to fund the estimated cost of the civil action both in total and on a monthly per unit basis, as required by subparagraph F. of this Article XII.

C. If the lawsuit relates to the condition of any of the common elements of the Subdivision, the Board shall obtain a written independent expert opinion as to reasonable and practical alternative approaches to repairing the problems with the common elements, which shall set forth the estimated costs and expected viability of each alternative. In obtaining the independent expert opinion required by the preceding sentence, the Board shall conduct its own investigation as to the qualifications of any expert and shall not retain any expert recommended by the litigation attorney or any other attorney with whom the Board consults. The purpose of the independent expert opinion is to avoid any potential confusion regarding the condition of the common elements that might be created by a report prepared as an instrument of advocacy for use in a civil action. The independent expert opinion will ensure that the Members of the Association have a realistic appraisal of the condition of the common elements, the likely cost of repairs to or replacement of the same, and the reasonable and prudent repair and replacement alternatives. The independent expert opinion shall be sent to the Members with the written notice of the litigation evaluation meeting.

D. The Association shall have a written fee agreement with the litigation attorney, and any other attorney retained to handle the proposed civil action. The Association shall not enter into any fee agreement that is a combination of the retained attorney's hourly rate and a contingent fee arrangement unless the existence of the

agreement is disclosed to the Members in the text of the Association's written notice to the Members of the litigation evaluation meeting.

E. At the litigation evaluation meeting the Members shall vote on whether to authorize the Board to proceed with the proposed civil action and whether the matter should be handled by the litigation attorney. The commencement of any civil action by the Association (other than a suit to enforce the Bylaws or collect delinquent assessments) shall require the approval of a majority in value of the Members of the Association. Any proxies to be voted at the litigation evaluation meeting must be signed at least seven (7) days prior to the litigation evaluation meeting.

F. All legal fees incurred in pursuit of any civil action that is subject to this Article XII shall be paid by special assessment of the Members of the Association ("litigation special assessment"). The litigation special assessment shall be approved at the litigation evaluation meeting (or at any subsequent duly called and noticed meeting) by a majority in number and in value of all Members of the Association in the amount of the estimated total cost of the civil action. If the litigation attorney proposed by the Board is not retained, the litigation special assessment shall be in an amount equal to the retained attorney's estimated total cost of the civil action, as estimated by the attorney actually retained by the Association. The litigation special assessment shall be apportioned to the Members in accordance with their respective percentage of value interests in the Subdivision and shall be collected from the Members on a monthly basis. The total amount of the litigation special assessment shall be collected monthly over a period not to exceed twenty-four (24) months.

G. During the course of any civil action authorized by the Members pursuant to this Article XII, the retained attorney shall submit a written report ("attorney's written report") to the Board every thirty (30) days setting forth:

1. The attorney's fees, the fees of any experts retained by the attorney, and all other costs of the litigation during the thirty (30) day period immediately preceding the date of the attorney's written report ("reporting period").

2. All actions taken in the civil action during the reporting period, together with copies of all pleadings, court papers and correspondence filed with the court or sent to opposing counsel during the reporting period.

3. A detailed description of all discussions with opposing counsel during the reporting period, written and oral, including, but not limited to, settlement discussions.

4. The costs incurred in the civil action through the date of the written report, as compared to the attorney's estimated total cost of the civil action.

5. Whether the originally estimated total cost of the civil action remains accurate.

H. The Board shall meet monthly during the course of any civil action to discuss and review:

1. The status of the litigation;
2. The status of settlement efforts, if any; and
3. The attorney's written report.

I. If, at any time during the course of a civil action, the Board determines that the originally estimated total cost of the civil action or any revision is inaccurate, the Board shall immediately prepare a revised estimate of the total cost of the civil action. If the revised estimate exceeds the litigation special assessment previously approved by the Members, the Board shall call a special meeting of the Members to review the status of the litigation, and to allow the Members to vote on whether to continue the civil action and increase the litigation special assessment. The meeting shall have the same quorum and voting requirements as a litigation evaluation meeting.

J. The attorneys' fees, court costs, expert witness fees and all other expenses of any civil action subject to this Article XII ("litigation expenses") shall be fully disclosed to Members in the Association's annual budget. The litigation expenses for each civil action subject to this Article XII shall be listed as a separate line item captioned "litigation expenses" in the Association's annual budget.