

ARTICLES OF INCORPORATION

**FILED**

OF

NOV 18 1997

*Ann Gilroy*

NEW AUGUSTA WOODS HOMEOWNER'S ASSOCIATION, INC. STATE OF INDIANA

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

ARTICLE I

Name

The name of the Corporation shall be "New Augusta Woods Homeowner's Association, Inc."

ARTICLE II

Purposes and Powers

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Section 1. Type of Corporation. The Corporation is a mutual benefit corporation, as such is described in the Act.

Section 2. Purposes. The Corporation is formed in connection with the development of New Augusta Woods, a single-family residential community developed in Marion County, Indiana, to be evidenced by a plat or plats thereof now or hereafter recorded in the Office of the Recorder of Marion County, Indiana (the "Development"), and, in furtherance of such general purpose, shall have the following specific purposes:

- (a) To provided for the management, regulation and maintenance of certain improvement and common areas constructed or to be constructed within the Development, such purposes being more particularly specified in a certain declaration of covenants, conditions and restrictions of Development (the "Declaration"), as recorded or to be recorded in the office of the Recorder of Marion County, Indiana, the terms and conditions thereof and legal description contained therein being incorporated herein by reference.
- (b) To exercise all powers and duties of the Board of Directors or Owners as a group referred to in the Declaration.
- (c) To do all acts and things necessary, convenient or expedient to carry out the express purpose for which the Corporation is formed.

Section 3. Powers. Subject to any specific written limitations imposed by the Act, or otherwise by law or by these Articles of Incorporation, and in furtherance of the purposes set forth in Section 2 of this Article, the Corporation shall have all the statutory powers specified in the Act.

Section 4. Limitation Upon Purposes and Powers. The Corporation shall not, by implication or construction, possess the power of engaging in any activities for the purpose of or resulting in the pecuniary remuneration to its members as such; provided, however, that nothing shall prohibit reasonable compensation to members for services actually rendered, upon approval by the Board of Directors, nor shall the Corporation be prohibited from engaging in any undertaking for profit so long as such undertaking does not inure to the profit of its members. The Corporation shall issue no stock and shall pay no dividends at any time.

### ARTICLE III

#### Term of Existence

The period during which the Corporation shall continue is perpetual.

### ARTICLE IV

#### Registered Office and Registered Agent

The post office address of the principal office of the Corporation is 29 Carnaby Drive, Brownsburg, Indiana 46112; and the name and post office address of its registered agent is John W. VanBuskirk, 50 South Meridian Street, Suite 700, Indianapolis, Indiana 46204.

### ARTICLE V

#### Membership and Voting Rights

Section 1. Membership. All lot owners in the Development, as well as, the members of the first Board of Directors as designated in Article VI herein, or their successors as appointed by the Declarant under the Declaration, shall be members; provided, however, if a Lot is owned by more than one person, entity or combination thereof, there shall be only one person with respect to any such lot entitled to a vote in accordance with the provision of the Declaration and the By-Laws.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant (as defined in the Declaration), who shall be entitled to three (3) votes for each Lot owned, and the first Board of Directors during their respective terms. The Class B membership shall expire at such time as the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or at such other time as specified in the Declaration.

Section 3. Meetings. All members shall be entitled to attend meetings of the members of the Corporation when and if they are held or called.

Section 4. Dues and Assessments. The amounts, method of payment, and sanctions for non-payment of membership dues and assessments shall be specified by the By-Laws of the Corporation and the Declaration.

## ARTICLE VI

### Data Respecting Directors

Section 1. Number. The number of the Directors of the Corporation shall be not less than three (3) nor more than nine (9), the exact number to be specified by the By-Laws of the Corporation. If the By-Laws do not otherwise provide, the number of Directors shall be three (3).

Section 2. Term of Office. Except as otherwise provided in the By-Laws, all of the Directors shall be elected by the members entitled to vote at each annual meeting and shall hold office for a term of one year or until their successors have been duly elected and qualified. All Directors must be members. A Director may be removed at any time, with or without cause, by a two-thirds (2/3's) vote of the Board of Directors.

Section 3. Names and Post Office Addresses. The names and post office addresses of the first Board of Directors of the Corporation are as follows:

<u>Name</u>	<u>Number and Street</u>	<u>City</u>	<u>State</u>	<u>Zip Code</u>
Ronald K. Fisher	29 Carnaby Drive	Brownsburg	Indiana	46112
Larry L. Dunkerly	29 Carnaby Drive	Brownsburg	Indiana	46112
Daryl A. Hensel	29 Carnaby Drive	Brownsburg	Indiana	46112

## ARTICLE VII

### Incorporator

The name and post office address of the incorporator are as follows:

<u>Name</u>	<u>Number and Street</u>	<u>City</u>	<u>State</u>	<u>Zip Code</u>
Larry L. Dunkerly	29 Carnaby Drive	Brownsburg	Indiana	46112

## ARTICLE VIII

### Indemnification of Officers, Directors and Other Persons

Section 1. Extent of Indemnification. (a) To the extent not prohibited by Indiana law, every person (and the heirs and personal representatives of such person) who is or was a Director, officer, trustee, member of a committee appointed by the Board of Directors, employee or agent of the Corporation or who at the request of the Corporation is or was a Director, officer, trustee, committee member, employee or agent of another corporation or is or was acting in any capacity in a partnership, joint venture, trust or other enterprise, shall be indemnified by the Corporation against all liability and reasonable expense that may be incurred by him in connection with or resulting from any non-criminal claim, action, suit or proceeding in the following instances:

- (i) if such Director, officer, trustee, committee member, employee or agent is determined, as provided in Section 3 of this Article VIII, to have acted in good faith; and
  - (ii) the individual reasonably believed: (A) in the case of conduct in the individual's official capacity with the Corporation, that the individual's conduct was in the Corporation's best interests; and (B) in all other cases, that the individual's conduct was at least not opposed to the Corporation's best interests.
- (b) With respect to any criminal action or proceeding, every person described in subsection 1(a) of this Article shall be indemnified to the extent provided in subsection 1(a) of this Article if the individual either:
- (i) had reasonable cause to believe his or her conduct was lawful; or
  - (ii) had no reasonable cause to believe that his or her conduct was unlawful.
- (c) The termination of any claim, action, suit or proceeding, by judgment, settlement (whether with or without court approval), or conviction or upon a plea of guilty or of nolo contendere, or its equivalent, shall not create a presumption that a Director, officer, trustee, committee member, employee or agent did not meet the standards of conduct set forth in subsections 1(a) or 1(b) of this Article.

Section 2. Definitions. (a) The terms "claim, action, suit or proceeding", whether used individually or together, shall include every claim, action, suit or proceeding and all appeals thereof (whether brought by or in the right of this Corporation or any other corporation or otherwise), civil, criminal, administrative or investigative, or threat thereof, in which a Director, officer, trustee, committee member, employee or agent of the Corporation (or his heirs and personal representatives) may become involved, as a party or otherwise:

- (i) by reason of his being or having been a Director, officer, trustee, committee member, employee or agent of this Corporation or of any other corporation where he served as such at the request of this Corporation, or

(ii) by reason of his acting or having acted in any capacity in a partnership, joint venture, association, trust or other organization or entity where he served as such at the request of this Corporation, or

(iii) by reason of any action taken or not taken by him in any such capacity, whether or not he continues in such capacity at the time such liability or expense shall have been incurred.

(b) The terms “liability” and “expense” shall include, but shall not be limited to counsel fees and disbursements and amounts of judgments, fines and penalties against, and amounts paid in settlement by or on behalf of a Director, officer, trustee, committee member, employee or agent.

(c) The term “party” includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

**Section 3. Procedure for Claiming Indemnification.** The Corporation shall not indemnify a person hereunder unless authorized in the specific case after a determination has been made that indemnification of such person is permissible in the circumstance because he or she has met the standards of conduct set forth in Section 1 of this Article VIII. Such determination shall be made by one (1) of the following procedures:

(a) By the Board of Directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding.

(b) If a quorum cannot be obtained under Section 3(a) of this Article VIII, by majority vote of a committee designated by the Board of Directors consisting solely of at least two (2) directors not at the time parties to the proceeding. Directors who are parties may participate in the designation.

(c) By special legal counsel:

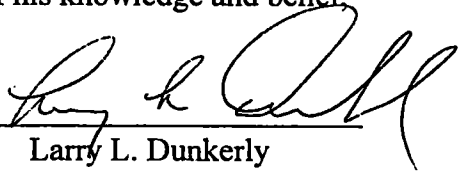
(i) Selected by the Board of Directors or a committee thereof in the manner prescribed in Section 3(a) or 3(b) of this Article VIII: or

(ii) If a quorum of the Board of Directors cannot be obtained under Section 3(a) of this Article VIII and a committee cannot be designated under Section 3(b) of this Article VIII, selected by a majority vote of the full Board of Directors. Directors who are parties may participate in the selection.

(d) By the members. However, membership voted under the control of Directors who are at the time parties to the proceedings may not be voted on the determination.

Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible. However, if the determination is made by special legal counsel, authorization of indemnification and evaluation as to the reasonableness of expenses shall be made by those entitled under Section 3(c) of this Article VIII to select counsel.

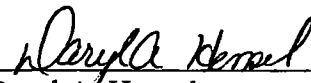
IN WITNESS WHEREOF, the undersigned, being the incorporator designated in Article VII, executes these Articles of Incorporation of the Corporation and hereby verifies subject to the penalties of perjury that the facts herein are true and correct to the best of his knowledge and belief, this 12<sup>th</sup> day of November, 1997.

  
Larry L. Dunkerly

STATE OF *INDIANA* }  
COUNTY OF *MARION* } SS:

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Larry L. Dunkerly, who after being duly sworn, acknowledged the execution of the foregoing New Augusta Woods Homeowner's Association Articles of Incorporation.

Witness my hand and Notarial Seal this 12<sup>th</sup> day of November, 1997

Signature:   
Printed : Daryl A. Hensel  
County of Residence: Marion  
My commission expires: May 29, 2001

STATE OF INDIANA  
OFFICE OF THE SECRETARY OF STATE

CERTIFICATE OF INCORPORATION

OF

NEW AUGUSTA WOODS HOMEOWNER'S ASSOCIATION, INC.

I, SUE ANNE GILROY, 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 November 18, 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 Eighteenth day of November, 1997.

*Sue Anne Gilroy*

SUE ANNE GILROY, Secretary of State



*[Signature]*  
Deputy