

CODE OF BY-LAWS

OF

NEW AUGUSTA WOODS HOMEOWNERS' ASSOCIATION, INC.

ARTICLE I

Identification

Section 1. Name. The name of the corporation is "New Augusta Homeowners' Association, Inc." (hereinafter referred to as "the Corporation").

Section 2. Principal Office and Resident Agent. The post-office address of the principal office of the Corporation is 29 Carnaby Drive, Brownsburg, Indiana and the name of its Resident Agent in charge of such office is John W. Van Buskirk, Stark Doninger & Smith, 50 South Meridian Street, Suite 700, Indianapolis, Indiana 46204.

Section 3. Fiscal Year. The fiscal year of the Corporation shall begin at the beginning of the first day of January in each year and end at the close of the last day of December next succeeding.

ARTICLE II

Members

Section 1. Membership. Every Owner, as defined in a certain declaration of covenants, conditions and restrictions of New Augusta ("Declaration") as recorded or to be recorded in the office of the Recorder of Marion County, Indiana, and the members of the first Board of Directors of the Corporation as specified by its Articles of Incorporation or their successors as appointed under the Declaration shall be a member of the Corporation. Each Owner shall be entitled to one (1) vote for each Lot owned.

Section 2. Place of Meeting. All meetings of members of the Corporation shall be held at such place, within or without the State of Indiana, as may be determined by the Board of Directors and specified in the notices or waivers of notice thereof or proxies to represent members at such meetings.

Section 3. Annual Meetings. The annual meetings of members shall be held on the third Thursday in March of each year, if such day is not a legal holiday, or if a legal holiday, then on the next succeeding business day which is not a legal holiday.

Section 4. Special Meetings. Special meetings of members may be called at any time for the purpose of considering matters which require the approval of all or some of the voting members, or for any other reasonable purpose. Any such special meeting shall be called by written notice, authorized

by a majority of the Board, or by one-third (1/3) of the members, delivered not less than seven (7) days prior to the date fixed for such meeting. The notices shall specify the date, time and place of meeting and the matters to be considered.

Section 5. Notice of Meetings. Written or printed notice stating the place, day and hour of a meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered or mailed by the Secretary of the Corporation to each member of record of the Corporation entitled to vote at the meeting, at such address as appears upon the records of the Corporation, at least ten (10) days before the date of the meeting. Notice of any meeting of the members may be waived in writing by any member if the waiver sets forth in reasonable detail the purpose or purposes for which the meeting is called and the time and place thereof. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

Section 6. Voting at Meetings.

(a) **Voting Rights.** There shall be one person with respect to each Lot, as such term is defined in the Declaration, who shall be entitled to vote at any meeting of the members. Such person shall be known as the "Voting Member." Such Voting Member may be the Owner or one of the group comprised of all the Owners of a Lot, or may be some person designated by such Owner or Owners to act as proxy on his or their behalf and who need not be an Owner. Any or all of such Voting Members may be present at any meeting of the Voting Members and may vote or take any action as a Voting Member, either in person or by proxy. Developer, as such term is defined in the Declaration (or its nominee), may exercise the voting rights with respect to any Lot owned by it. During the Development Period, as such term is defined in the Declaration, all actions of the Corporation shall require the prior written approval of the Developer (or its nominee).

(b) **Proxies.** A Voting Member is entitled to vote either in person or by proxy, executed in writing by such Voting Member or by his or her duly authorized attorney-in-fact and delivered to the Secretary of the meeting. Proxies shall be valid only for the particular meeting designated thereon and must be filed with the Secretary before the scheduled time of the meeting. In any meeting of the Voting Members called for the purposes of electing the Board of Directors of the Corporation each Voting Member shall be permitted to cast the number of votes to which he is entitled, as hereinabove set forth, for each Director of the Corporation to be elected at such meeting.

(c) **Quorum and Adjournments.** The presence in person or by proxy of the Voting Members constituting the representation of a majority of the total votes shall constitute a quorum. Unless otherwise expressly provided herein, any action may be taken at any meeting of the Voting Members at which a quorum is present upon the affirmative vote of the Voting Members having a majority of the total votes present at such meeting. Any meeting of the Voting Members, including both annual and special meetings and any adjournments thereof, may be adjourned to a later date without notice other than announcement at the meeting even though less than a quorum is present.

Section 7. List of Voting Members. At least five (5) days before each meeting of Voting Members, the Secretary of the Corporation shall prepare or cause to be prepared a complete list of the Voting Members of the Corporation entitled to vote at such meeting arranged in alphabetical order

with the address of such Voting Members and shall be subject to inspection by a record Voting Member. The original or duplicate membership register shall be the only evidence as to the persons who are entitled as Voting Members to examine such lists or to vote at such meeting.

Section 8. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Voting Members may be taken without a meeting, if prior to such action, a written consent thereto, setting forth the action so taken, is signed by all the Voting Members entitled to vote with respect to the subject matter thereof, and such written consent is filed with the minutes of the proceedings of the Voting Members. Such consent shall have the same effect as a unanimous vote of the Voting Members.

ARTICLE III

Directors

Section 1. Number and Term of Office. The Board of Directors shall consist of three (3) members. The Directors shall serve without compensation unless such compensation is approved by the Voting Members holding a majority of the total votes. The Board shall be elected by the Voting Members at their annual meeting and shall hold office until the next ensuing annual meeting of the Voting Members or until their successors have been duly elected and qualified. If a member of the Board of Directors shall cease to meet any qualification herein required for a member of the Board, such member shall thereupon cease to be a member of the Board and his place on the Board shall be deemed vacant. The Voting Members may remove any member of the Board with or without cause, and elect a successor at a meeting of the Voting Members called expressly for such purpose.

Section 2. Vacancies. Vacancies occurring in the membership of the Board of Directors caused by resignation, death or other incapacity, or increase in the number of Directors shall be filled by a majority vote of the remaining members of the Board, and each Director so elected shall serve until the next meeting of the Voting Members, or until his successor shall have been duly elected and qualified. Notice specifying any increase in the number of Directors and the name, address and principal occupation of and other pertinent information about any Director elected to fill any vacancy shall be given in the next mailing sent to the Voting Members after such increase or election.

Section 3. Annual Meetings. The Board of Directors shall meet annually, without notice, immediately following, and at the same place as, the annual meeting of the Voting Members.

Section 4. Regular Meetings. Regular meetings shall be held at such times and places, either within or without the State of Indiana, as may be determined by the President or Board of Directors.

Section 5. Special Meetings. Special meetings of the Board of Directors may be called by the President or by the member of the Board of Directors, at any place within or without the State of Indiana, upon twenty-four (24) hours notice, specifying the time, place and general purposes of the meeting, given to each Director personally, by telephone or telegraph; or notice may be given by mail if mailed at least three (3) days before such meeting.

Section 6. Waiver of Notice. Any Director may waive notice of any meeting in writing. Attendance by a Director at a meeting shall constitute a waiver of notice of such meeting.

Section 7. Quorum. A majority of the entire Board of Directors then qualified and acting shall constitute a quorum and be sufficient for transaction of any business, except for filling vacancies in the Board of Directors which shall require action by a majority of the remaining Directors. Any act of the majority of the Directors present at a meeting at which a quorum shall be present shall be the act of the Board unless otherwise provided for by law or by these By-Laws. A majority of the Directors present may adjourn any meeting from time to time. Notice of an adjourned meeting need not be given other than by announcement at the time of adjournment.

Section 8. Action by Written Consent. Action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting, if prior to such action, a written consent thereto is signed by all the members of the Board, and such written consent is filed with the minutes of the proceedings of the Board.

Section 9. Initial Board of Directors. Notwithstanding anything in this Article III to the contrary, the first Board of Directors shall hold office until the earlier of his or her resignation, death, or removal by the Developer, or replacement by majority vote of the members. Any vacancy created by the resignation, death or removal of an initial Director shall be filled by appointment of those initial Directors remaining, after which the remaining Directors shall fill such vacancy.

ARTICLE IV

Officers

Section 1. Number of Officers. The officers of the Corporation shall consist of a President, a Secretary, a Treasurer, and such officers or assistant officers as the Board shall from time to time create and so elect. Any two (2) or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person. The President shall be chosen from among the Directors. Officers shall serve without compensation unless such compensation is approved by the Voting Members holding a majority of the total votes.

Section 2. Election and Terms. Each officer shall be elected by the Board of Directors at the annual meeting thereof and shall hold office until the next annual meeting of the Board or until his successor shall have been elected and qualified or until his death, resignation or removal. Any officer may be removed at any time, with or without cause, by vote of a majority of the whole Board, but such removal shall be without prejudice to the contract rights, if any, of the person so removed; provided, however, that election of an officer shall not of itself create contract rights.

Section 3. Vacancies. Whenever any vacancy shall occur in any office by death, resignation, increase in the number of officers of the Corporation, or otherwise, the same shall be filled by the Board of Directors, and the officer so elected shall hold office until the next annual meeting of the Board or until his or her successor is duly elected or appointed.

Section 4. President. The President shall be the chief executive officer of the Corporation; shall preside at all meetings of Voting Members and of the Board of Directors; shall have general and active supervision, control and management of the affairs and business of the Corporation, subject to the orders and resolutions of the Board; shall have general supervision and direction of all officers, agents and employees of the Corporation; shall see that all orders and resolutions of the Board are carried into effect; and in general shall exercise all powers and perform all duties incident to such office and such other powers and duties as may from time to time be assigned to him by the Board.

The President shall have full authority to execute proxies in behalf of the Corporation, and to execute, with the Secretary, powers of attorney appointing other corporations, partnerships, or individuals the agent of the Corporation, all subject to the provisions of the laws of the State of Indiana, the Declaration, the Articles of Incorporation and this Code of By-Laws.

Section 5. Secretary. The Secretary shall attend all meetings of the Board and of the Voting Members and shall act as Secretary of such meetings; shall give or cause to be given all notices provided for in these By-Laws or required by law; shall record all votes and minutes of all proceedings of the meetings of Voting Members and the Board in a book or books to be kept for that purpose; shall be custodian of the records of the Corporation; shall have charge of the list of Voting Members; and in general shall exercise all powers and perform all duties as may be from time to time assigned to him or her by the Board or by the President.

Section 6. Treasurer. The Treasurer shall keep correct and complete records of account showing accurately at all times the financial condition of the Corporation; shall be the custodian of the corporate funds and securities; shall immediately deposit, in the name and to the credit of the Corporation, all moneys and other valuable effects of the Corporation in such depositories as may be designated by the Board of Directors; shall disburse the funds of the Corporation as may be ordered by the Board or by the President; and in general, shall exercise all powers and perform all duties customarily incident to such office and such other powers and duties as may from time to time be assigned to him or her by the Board or the President.

ARTICLE V

Books and Records

Section 1. Books and Records, in General. The Board of Directors shall keep full and correct books of account in chronological order of the receipts and expenditures affecting the "Development" as defined in the Declaration, specifying and itemizing the maintenance and repair expenses of the Development and other expenses incurred. Such records and the vouchers authorizing the payments shall be available for inspection by any Owner or any representative of an Owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by Owner. Upon ten (10) days notice to the Board and payment of a reasonable fee, any Owner shall be furnished a statement in recordable form of his account setting forth the amount of any unpaid assessment or other charges due and owing from such Owner, and such amount shall be binding upon the Board and

the Corporation, and any mortgagee or grantee of such Owner furnished with such statement shall not be liable for, and the Lot of such Owner shall not be conveyed subject to a lien for, any unpaid assessment in excess of the amount set forth in such statement.

ARTICLE VI

Execution of Instruments

Section 1. Checks, Drafts, etc. All checks, drafts, bills of exchange or other orders for the payment of money, obligations, notes or other evidences of indebtedness of the Corporation shall be signed or endorsed by such officer or officers, employee or employees of the Corporation as shall from time to time be designated by the Board of Directors.

Section 2. Contracts. All contracts, agreements, deeds, conveyances, mortgages and similar instruments authorized by the Board of Directors shall be signed, unless otherwise directed by the Board of Directors or required by law, by the President and attested by the Secretary.

ARTICLE VII

Amendments and Definitions

Section 1. Amendments. These By-Laws may be altered, amended or repealed from time to time by a majority vote of the whole Board at any regular or special meeting if the notice or waiver of notice of said meeting shall have stated that the By-Laws are to be amended, altered or repealed or if all members of the Board of Directors at the time are present at said meeting.

Section 2. Definitions. The terms used in these By-Laws shall have the same meaning as the same terms as defined and used in the Declaration.

ARTICLE VIII

The Indiana Nonprofit Corporation Act of 1991

The provisions of the Indiana Nonprofit Corporation Act of 1991, as amended, applicable to any of the matters not herein specifically covered by these By-Laws, are hereby incorporated by reference in and made a part of these By-Laws.

Adopted: November 12, 1997

STATE OF INDIANA
OFFICE OF THE SECRETARY OF STATE

CERTIFICATE OF INCORPORATION

OF

NEW AUGUSTA WOODS HOMEOWNER'S ASSOCIATION, INC.

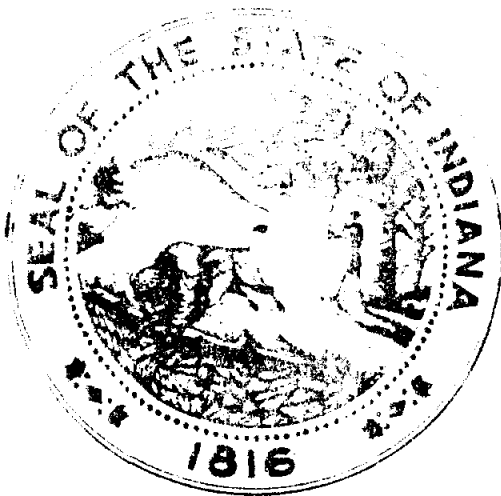
I, SUE ANNE GILROY, Secretary of State of Indiana, hereby certify that Articles of Incorporation of the above corporation have been presented to me at my office accompanied by the fees prescribed by law; that I have found such Articles conform to law; all as prescribed by the provisions of the Indiana 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

ARTICLES OF INCORPORATION

FILED

OF

NOV 18 1997

Sue Anne Gilroy

NEW AUGUSTA WOODS HOMEOWNER'S ASSOCIATION, INC. SECRETARY OF 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."

RECEIVED
CORPORATIONS DIV.
NOV 18 2 4 18
SUZANNE GILROY

ARTICLE II

Purposes and Powers

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 reasonable 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:

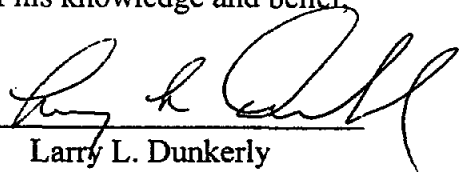
(i) Selected by the Board of Directors or a committee thereof in the manner prescribed in Section 3(a) or 3(b) of this Article VIII: or

(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 12th 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 Seat this 12th day of November, 1997

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