

800
4216
J. M. W.

APPROVED
AND
FILED
IND. SECRETARY OF STATE

ARTICLES OF INCORPORATION OF
SCARLETT LAKES HOMEOWNERS ASSOCIATION, INC.

The undersigned Incorporator, 53rd Street Associates, LLC ("Declarant"), desiring to form a nonprofit corporation, pursuant to the provisions of the Indiana Nonprofit Corporation Act of 1991, as amended (the "Act"), and incorporated under the terms and conditions of a certain document entitled "Scarlett Lakes Restrictive Covenants", said document being recorded in the Madison County Recorder's Office on February 22, 1995, as **Instrument No. 95-02933**, said document being amended by a certain "Amendment to Scarlett Lakes Restrictive Covenants" recorded in the Madison County Recorder's Office on March 17, 1997, as **Instrument No. 97-04844**, said documents collectively referred to hereafter as the "Plat Covenants", executes the following Articles of Incorporation. The Plat for Scarlett Lakes, Section One was recorded March 10, 1995, in Plat Book 21, Page 39, as **Instrument No. 95-03850**, and established Lots 1 through 39, inclusive. The Plat for Scarlett Lakes, Section Two was recorded August 4, 1995, in Plat Book 21, Page 96, as **Instrument No. 95-13568**, and established Lots 40 through 67, inclusive. The Plat for Scarlett Lakes, Section Three was recorded August 4, 1995, in Plat Book 21, Page 98, as **Instrument No. 95-13569**, and established Lots 68 through 82, inclusive. The Plat for Scarlett Lakes, Section Four has not yet been recorded, but, upon recording, will establish Lots 83 through 104, inclusive. The Plat for Scarlett Lakes, Section Five has not yet been recorded, but, upon recording, will establish Lots 105 through 156, inclusive. The Plats for Sections One, Two and Three and the Plat Covenants are incorporated herein by reference. Upon recording, the Plats for Sections Four and Five will also be incorporated herein by reference. As used herein, "Plats" shall mean and refer to the foregoing Plats collectively. All of the covenants, rights, restrictions, and liabilities contained in the Plat Covenants shall apply to and govern the interpretation of these Articles of Incorporation and the Code of By-Laws. The definitions and terms, as defined and used in the Plat Covenants, shall have the same meaning in these Articles of Incorporation and the Code of By-Laws. Notwithstanding the foregoing, lots 1, 2, 4, and 5 as shown on the Section One Plat are commercial properties and shall not be considered "Lots" as that term is used herein and in the By-Laws. Likewise, lots 3 and 21 as shown on the Section One Plat, and lot 82 as shown on the Section Three Plat, are Common Areas (drainage ponds) to be owned by this Corporation. Thus, when the Plats for Sections Four and Five are recorded, there will be a total of one hundred forty-nine (149) residential "Lots" in Scarlett Lakes. These Articles of Incorporation shall apply to all Sections of Scarlett Lakes. The legal description of Scarlett Lakes, including all five (5) Sections, is attached hereto as Exhibit "B".

ARTICLE I
NAME

The name of the corporation is Scarlett Lakes Homeowners Association, Inc. (hereafter referred to as "Corporation").

ARTICLE II
TYPE OF CORPORATION

Section 2.1. Mutual Benefit Corporation. This is a mutual benefit corporation.

9718498

ARTICLE III PURPOSES AND POWERS

Section 3.1. Purposes. The purposes for which the Corporation is formed are to provide for the maintenance, repair, upkeep, replacement, administration, operation and management of the Common Areas and such other portions of Scarlett Lakes as designated in the Plats and Plat Covenants, to pay any other necessary expenses and costs in connection with the same in accordance with the Plat Covenants and to perform such other functions as may be designated to it.

Section 3.2. Powers. Subject to any limitation or restriction imposed by the Act, any other law, the Plat Covenants, 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 perform all of the duties and obligations of the Corporation as set forth in the Plat Covenants and By-Laws, as the same may be amended from time to time;

(b) To establish, levy, collect and enforce payment by any lawful means of any charges or assessments made against Owners or others pursuant to the terms of the Plat Covenants and these Articles of Incorporation; to pay all expenses in connection with such collection and all office and other expenses incident to the conduct of the business of the Corporation including any license fees, taxes or other governmental charges levied or imposed against the property of the Corporation;

(c) To borrow money and, with the consent of two-thirds (2/3) of the Class A Members, all Class B Members, and two-thirds (2/3) of all first mortgagees, mortgage, pledge, deed in trust or hypothecate any and all of its real or personal property as security for money borrowed or debts incurred;

(d) To enter into, make, perform and carry out, or cancel and rescind, contracts for any lawful purposes pertaining to its business;

(e) 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 held in title by this Corporation in connection with the affairs of the Corporation;

(f) Upon approval by a written instrument signed by two-thirds of all Class A Members, all Class B Members, and two-thirds of all first mortgagees, to dedicate, sell or transfer any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members;

(g) Sue, be sued, complain, and defend in the Corporation's corporate name;

(h) Make and amend By-Laws not inconsistent with the Corporation's Articles of Incorporation, the Act, the Plat Covenants or with Indiana law for managing the affairs of the Corporation. The By-Laws are attached hereto as Exhibit "A" and incorporated herein;

(i) Elect directors, elect and appoint officers, and appoint employees and agents of the Corporation, and define the duties and fix the compensation of directors, officers, employees and agents;

(j) Purchase and maintain insurance on behalf of any individual who:

(1) is or was a director, an officer, an employee, or an agent of the Corporation; or

(2) is or was serving at the request of the Corporation as a director, an officer, an employee, or an agent of another entity;

against any liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, an officer, an employee, or an agent, whether or not the Corporation would have power to indemnify the individual against the same liability under this article;

(k) To have, hold, exercise and enjoy in furtherance of the purposes set forth hereinabove and hereinbelow, all of the rights, powers, privileges and immunities granted, and not expressly denied, by the Act as now or hereafter amended and under the common law as may be necessary, convenient or expedient in order to accomplish the purposes set forth hereinabove and hereinbelow, but subject to any limitation or restriction imposed by the Act, by any other law, by these Articles of Incorporation, or by the Plat Covenants;

(l) To do everything necessary, proper, advisable, or convenient for the accomplishment of any of the purposes, or the attainment of any of the objects or the furtherance of any of the powers herein set forth, and to do every other act and thing incidental thereto or connected therewith, which is not forbidden by the laws of the State of Indiana, or by the provisions of these Articles of Incorporation or the Plat Covenants;

(m) To do all acts and things necessary, convenient or expedient to carry out the purposes for which the Corporation is formed.

Section 3.3. Limitation of Activities. The Corporation shall not possess the power of engaging in any activities for the purpose of or resulting in the pecuniary remuneration to its members as such. This provision shall not prohibit fair and reasonable compensation to members for services actually rendered; nor shall it prohibit the Corporation from charging a fee for services rendered; nor shall it prohibit the Corporation from charging a fee for admission to any presentation it may make or other undertakings so long as any funds so raised do not inure to the profit of its members.

ARTICLE IV REGISTERED AGENT, REGISTERED OFFICE & PRINCIPAL OFFICE

Section 4.1 Registered Agent and Registered Office. The name and street address of the Corporation's registered agent and registered office for service of process shall be:

Mr. Palmer Inniger
18 Boone Woods
Zionsville, Indiana 46077

Section 4.2 Principal Office. The post office address of the principal office of the Corporation is:

18 Boone Woods
Zionsville, Indiana 46077

ARTICLE V MEMBERSHIP

Section 5.1. Members. Every person or entity who owns one or more Lots within Scarlett Lakes, including contract sellers, shall automatically upon becoming an Owner of a Lot be and become a member of the Corporation; provided, however, that any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a member.

Section 5.2. Rights, Preferences, Limitations and Restrictions of Classes. All members shall have the same rights, privileges, duties, liabilities, limitations and restrictions as the other members of the same class. All members shall abide by the Articles of Incorporation, the Code of By-Laws, the rules and regulations adopted by the Board of Directors, and all covenants, restrictions and other provisions contained in the Plat Covenants.

Section 5.3. Classes of Members. The Corporation shall have two (2) classes of membership, with the following voting rights:

(i) **Class A.** Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(ii) **Class B.** Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the registered agent of the Corporation. Each Class B Member shall be entitled to three (3) votes for each Lot of which it is the Owner on all matters requiring a vote of the Members of the Corporation. The Class B membership shall cease and terminate upon the Applicable Date, which shall be the first to occur of:

(i) the date upon which the written resignation of the Class B Members as such is delivered to the registered agent of the Corporation,

(ii) thirty (30) days after the date when at least one hundred twelve (112) of the one hundred forty-nine (149) Lots are owned by someone other than the Declarant, or its successors or assigns, or

(iii) December 31, 2000.

After the Applicable Date, all Class B Members shall become Class A Members and subject to all terms, conditions, restrictions, rules and regulations applicable to Class A Members.

Section 5.4. Quorum. Except where otherwise expressly provided in the Plat Covenants, these Articles, the By-Laws, or the Act, the presence of members or their duly authorized representatives owning twenty-five percent (25%) of the total number of Lots shall constitute a quorum at all meetings. As used elsewhere in these Articles and in the Code of By-Laws, the term "Majority of the Members" shall mean, unless otherwise expressly indicated, the Owners of more than fifty percent (50%) of the total number of Lots, and the term "Majority of the Vote" shall mean a majority of the Owners or votes present or represented at a meeting at which a quorum is represented.

Section 5.5. Definition of "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 legal title to a Lot. Persons or entities owning a single Lot as tenants in common, joint tenants or tenants by the entireties shall be deemed one Owner.

Section 5.6. Rights, Preferences, Limitations and Restrictions of Members. Any Class A Member who fails to comply with the requirements of these Articles, the Plat Covenants, the By-Laws or the rules and regulations made pursuant thereto, including the payment of assessments, shall, if a majority of the Board of Directors by an affirmative vote at a Board of Directors' meeting so determine, during the time period of such failure, suspend his or its membership rights and interest to use the amenities and to vote on any matter coming before the members. However, a member may not be so suspended except under a procedure adopted by resolution of a majority of the Board of Directors that is fair, reasonable and carried out in good faith. Such a procedure shall fully comply with the Act, as amended.

Section 5.7. Meetings of Members. Meetings of the members may be held at any place inside Madison County, Indiana, which shall be designated by the Board of Directors of the Corporation, or as the By-Laws may designate.

ARTICLE VI TERM OF EXISTENCE

The period during which the Corporation shall continue as a corporation is perpetual.

ARTICLE VII DIRECTORS

Section 7.1. Number of Directors. Subject to the provisions for Initial Directors as set forth below, the number of the Directors of this Corporation shall be not less than three (3) nor more than nine (9) as prescribed from time to time in the By-Laws of the Corporation. Whenever the By-Laws do not specify the exact number, the number of Directors shall be five (5). The qualification of Directors and the election of Directors shall be as prescribed from time to time in the By-Laws of the Corporation.

Section 7.2. Initial Board of Directors. The Initial Board of Directors shall be: Harry Kennerk, Palmer Inniger and Hugh Kennerk (hereinafter referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, these Articles or the By-Laws (a) the Initial Board shall hold office until the Applicable Date, and (b) in the

event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Lot by any type or juridical acts inter vivos or cause mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which Members of the Corporation are entitled to vote under the Plat Covenants, these Articles, the By-Laws or otherwise; provided, however, this right to vote granted to Declarant shall not extend to votes of Members (if a vote is required) on matters of Special Assessments, mortgaging Common Area, or merger/consolidation of the Corporation with another corporation. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Initial Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Corporation).

Section 7.3. Election of Directors. Subject to the provisions for Initial Directors as set forth above, the Board of Directors shall be elected by ballot at the annual meeting of the Members and each Director shall hold office for a term of three (3) years or until his or her successor shall have been elected and qualified.

Section 7.4. Vacancies in the Board of Directors. Subject to the provisions for Initial Directors as set forth above, any vacancy occurring on the Board of Directors caused by a death, resignation or otherwise, other than a vacancy created by removal or an increase in the number of Directors, shall be filled until the next annual meeting of the Members through a vote of a majority of the remaining members of the Board, unless specified otherwise in the By-Laws. At the first annual meeting following any such vacancy, a Director shall be elected by the Owners to serve for the balance of the term of the Director in respect to whom there has been a vacancy.

Section 7.4. Removal of Directors. Subject to the provisions for Initial Directors as set forth above, a Director or Directors, elected by the Owners or elected by the Directors to fill a vacancy, may be removed by the Owners with or without cause if the number of votes cast to remove would be sufficient to elect the Director(s) at a meeting to elect Directors. A Director or Directors elected by the Owners may be removed by the Owners only at a meeting called for the purpose of removing the Director(s). The meeting notice must state that the purpose of the meeting is for voting upon the removal of the Director(s). In such case, his or their successor(s) shall be elected by the Owners at the same meeting from eligible Owners nominated at the meeting to serve for the remainder of the term(s) of the removed Director or Directors.

ARTICLE VIII INCORPORATORS

The name and address of the incorporator of the Corporation is as follows:

53rd Street Associates, LLC
18 Boone Woods
Zionsville, Indiana 46077

ARTICLE IX STATEMENT OF PROPERTY

At the time of incorporation, the Corporation owns no property.

ARTICLE X PROVISIONS FOR REGULATION OF BUSINESS AND CONDUCT OF AFFAIRS OF THE CORPORATION

Section 10.1. Powers Exercised by Board. Subject to any limitations or restrictions imposed by law, by these Articles of Incorporation or by the Plat Covenants, 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 prior authorization or subsequent approval of the members of the Corporation or of any other person or entities.

Section 10.2. Liability of Members. Neither the individual members of the Corporation nor their individual property shall be subject to any liability for any debts of the Corporation.

Section 10.3. Dissolution. The Corporation may be dissolved voluntarily only with the written consent of all Class A and Class B Members.

Section 10.4. Distribution of Property On the Voluntary or Involuntary Dissolution of the Corporation. Upon the voluntary or involuntary dissolution of the Corporation, the Board of Directors shall, after paying or making provision for payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation by distributing and transferring same to the members of the Corporation.

Section 10.5. Amendment of Articles of Incorporation. Unless otherwise required by the Indiana Nonprofit Corporations Act of 1991, as amended, any amendment to the Articles of Incorporation shall require the consent of at least a Majority of the Members as defined in section 5.4 hereof. Notwithstanding the above, prior to the Applicable Date, the Declarant shall have the right to amend these Articles of Incorporation without the consent of the Class A Members.

Section 10.6. No Private Benefit. No money or property received or held by the Corporation shall ever inure, directly or indirectly, to the private benefit of any member, Director or Officer of the Corporation or to any other person whomsoever except for reasonable compensation for services actually rendered to the Corporation.

Section 10.7. Indemnification. The Board of Directors of this Corporation may, at its discretion, indemnify any or all directors, officers, employees, or agents or former directors, officers, employees or agents of the Corporation, as shall be prescribed from time to time in the By-Laws of the Corporation. Whenever the By-Laws of the Corporation shall not specify any indemnification provisions for the benefit of such above-named persons, all such above-named persons shall have all rights of indemnification as are proscribed in the Act.

Section 10.8. 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 the manner provided by the Board of Directors of the Corporation.

Section 10.9. By-Laws. The By-Laws of the Corporation may be amended as set forth in the By-Laws. Said By-Laws may contain other provisions consistent with the laws of the State of Indiana, for the regulation and management of the affairs of the Corporation.

ARTICLE XI ASSESSMENTS

Section 11.1. Obligation to Pay Assessments. As set forth in the Plat Covenants, each Owner of a Lot by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay assessments as the same become due.

Section 11.2. Annual Budget. Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall prepare an annual budget for the next fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The Board of Directors of the Corporation shall adopt the annual budget without the approval of the Class A Members. The annual budget shall be the basis for the Regular Assessments (hereinafter defined) for the fiscal year. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget may include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund, if any, for capital expenditures and replacement and repair of the Common Area shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Madison County, Indiana selected from time to time by the Board.

Section 11.3. Regular Assessments. The annual budget as adopted by the Board of Directors shall, based on the estimated cash requirements for the Common Expenses as set forth in said budget, contain an assessment against each Lot, which shall be the same amount for each Lot. Immediately following the Board's adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid annually in one lump sum by the Owners, with the due date determined by the Board of Directors. The Board of Directors may elect to have the Regular Assessments paid by the Owners in semi-annual installments. Payment of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors. The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date.

Section 11.4. Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, and further provided that the Declarant shall not be any Owner's agent, attorney-in-fact or proxy in this vote pursuant to Section 7.2 hereof, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment").

Section 11.5. Regular Assessments Prior to the Applicable Date. During the period that Declarant and/or builders are constructing homes within Scarlett Lakes, it is difficult to accurately allocate the Common Expenses to the individual Lots. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the Applicable Date to enable the Corporation to perform its duties and functions. Accordingly, and notwithstanding any other provision contained in these Articles of Incorporation, the Plat Covenants, or the By-Laws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this Section 11.5.

The Corporation may enter into a management agreement with Declarant (or a corporation or other entity designated by Declarant) (hereinafter referred to as "Managing Agent"). So long as such management agreement (or similar agreement) remains in effect, the Common Expenses and Regular Assessments shall be paid by Owners to Managing Agent. Declarant shall guarantee that until the earlier of (1) the termination of said management agreement or (2) December 31, 1998, the Regular Assessment shall not exceed Two Hundred Forty Dollars (\$240.00) per Lot (the "Guaranteed Charge"). After this date (assuming that said management agreement or similar agreement is still in effect) and so long thereafter as said management agreement (or similar agreement) remains in effect and Managing Agent continues to perform such functions, Declarant guarantees that the Regular Assessment shall not exceed the amount of the Guaranteed Charge plus a maximum of a twenty percent (20%) increase in the Guaranteed Charge for each year. Such adjustments to the Guaranteed Charge (up to a twenty percent (20%) increase as determined by the Board) shall be made annually on January 1 of each year so long as said management agreement remains in effect and Managing Agent continues to perform such functions. Such charge shall, during such guaranteed period, entirely defray the Owner's obligation for his share of Common Expenses and shall be the Owner's entire Regular Assessment. Declarant shall be responsible for any deficit during such guarantee period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. Such expenditures would be covered through Special Assessments, or, if sufficient, the replacement reserve fund, if any such fund exists.

Payment of Regular Assessments prior to the Applicable Date with respect to each Lot (that is not owned by Declarant) shall commence on the date of conveyance by Declarant to such new owner (including a builder). The first payment shall be payable on the date of conveyance, prorated to the last day of the current fiscal year.

IN WITNESS WHEREOF, the undersigned Incorporator does hereby execute these Articles of Incorporation and certify the truth of the facts herein stated, this 23rd day of July, 1997.

53RD STREET ASSOCIATES, LLC

BY: Palmer Inniger, POA
Signature

Palmer Inniger, POA
Printed & Title

STATE OF INDIANA)
) SS:
COUNTY OF Boone)

Before me, a Notary Public in and for said County and State, personally appeared Palmer Inniger by me known and by me known to be the Power of Attorney of 53rd Street Associates, LLC, an Indiana limited liability company, who acknowledged the execution of the foregoing Articles of Incorporation of Scarlett Lakes Homeowners Association, Inc. on behalf of said limited liability company, the incorporator, and who, having been duly sworn, stated that the representations contained herein are true.

WITNESS my hand and Notarial Seal this 23 day of July, 1997.

Frances J. Traflet
Notary Public--Signature

FRANCES J TRAFLET
Notary Public--Printed

My Commission Expires:

6/28/99

Residence County: Boone