

STATE OF INDIANA
OFFICE OF THE SECRETARY OF STATE

To Whom These Presents Come, Greeting:

CERTIFICATE OF INCORPORATION

FOXCLIFF ESTATES SOUTH HOMEOWNER'S ASSOCIATION, INC.

I, EDWIN J. SIMCOX, Secretary of State of Indiana, hereby certify that Articles of Incorporation of the above not-for-profit corporation, in the form prescribed by this Office, prepared and signed in duplicate by the Incorporator(s) and acknowledged and verified by the same before a Notary Public, have been presented to me at this office accompanied by the fees prescribed by law; that I have found such Articles conform to law; that I have endorsed my approval upon the duplicate copies of such Articles; that all fees have been paid as required by law; that one copy of such Articles has been filed in this office; and that the remaining copy(ies) of such Articles bearing the endorsement of my approval and filing has (have) been returned by me to the incorporator(s) or his (their) representatives; all as prescribed by the Indiana Not-for-Profit Corporation Act of 1971.

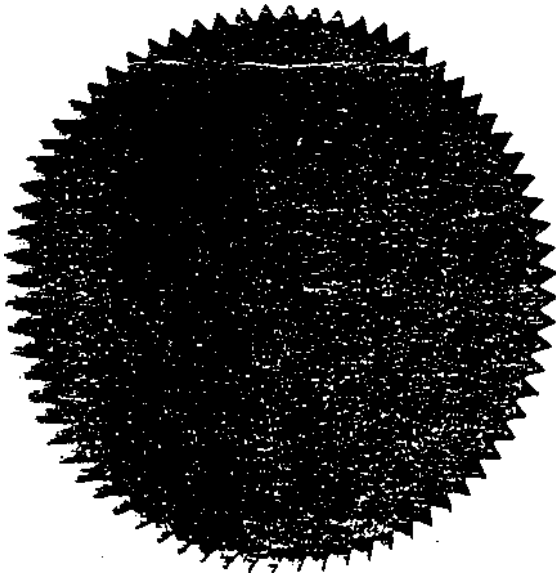
NOW, THEREFORE, I hereby issue to such Corporation this Certificate of Incorporation, and further certify that its corporate existence has begun.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this
_____ 14th day of

_____ June _____ 19 85

EDWIN J. SIMCOX, Secretary of State

By _____
Deputy



ARTICLES OF INCORPORATION

of

FOXCLIFF ESTATES SOUTH HOMEOWNER'S ASSOCIATION, INC.

The undersigned incorporator, desiring to form a corporation (hereinafter referred to as the "Corporation") pursuant to the provisions of the Indiana Not-For-Profit Corporation Act of 1971, as amended (hereinafter referred to as the "Act"), executes the following Articles of Incorporation.

ARTICLE I

Name

The name of the Corporation is FOXCLIFF ESTATES SOUTH HOMEOWNER'S ASSOCIATION, INC.

ARTICLE II

Purposes and Powers

Section 2.1. Purposes. Among the purposes for which the Corporation is formed are:

(a) To effect the association of lot owners in the Foxcliff Estates South Subdivision ("Subdivision") for their mutual benefit; to improve, operate and maintain the common areas and facilities serving the lot owners of the Subdivision; to develop and enforce building quality controls which are desirable in order to maintain the pleasant appearance of the Subdivision; and to enforce the covenants and restrictions applicable to the Subdivision.

(b) Solely in furtherance of the aforesaid purposes, to transact any and all lawful business for which corporations may be incorporated under the Act, provided such business is not inconsistent with the Corporation being organized and operated exclusively for not-for-profit purposes.

Section 2.2. Non-profit Purposes.

(a) The Corporation is organized and operated exclusively for not-for-profit purposes and its activities shall be conducted in such a manner that no part of its net earnings shall inure to the benefit of any member, director, or officer or other private person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Section 2.1.

(b) No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office.

(c) Notwithstanding any other provision of these Articles of Incorporation, the Corporation shall not carry on any other activities not permitted to be carried on:

(i) By a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws, or

(ii) By a corporation, contributions to which are deductible under Section 170(c)(2), Section 2055(a)(2), or Section 2522(a)(2) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws.

Section 2.3. Powers. Subject to any limitation or restriction imposed by the Act, any other law, or any other provisions of these Articles of Incorporation, the Corporation, shall have the power:

(a) To do everything necessary, advisable or convenient for the accomplishment of any of the purposes hereinbefore set forth, or which shall at any time appear conducive to or expedient for the protection or benefit of the Corporation, and to do all of the things incidental thereto or connected therewith which are not forbidden by law; and

(b) To have, exercise and enjoy in furtherance of the purposes hereinbefore set forth all the general rights, privileges and powers granted to corporations by the Act, as now existing or hereafter amended, and by the common law.

Section 2.4. Limitations on Powers.

(a) The Corporation shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws.

(b) The Corporation shall not engage in any act of self-dealing that would subject any person to the taxes imposed on acts of self-dealing by Section 4941 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax law.

(c) The Corporation shall not retain any excess business holdings which would subject it to the tax on excess business holdings imposed by Section 4943 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax law.

(d) The Corporation shall not make any investments in such a manner as to subject it to the tax under Section 4944 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax law.

(e) The Corporation shall not make any expenditures which would subject it to the taxes on taxable expenditures imposed by Section 4945 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax law.

(f) Upon the dissolution of the Corporation, the board of directors shall, after paying or making provision for the payment of all the liabilities of the Corporation, dispose of all the assets of the Corporation exclusively for the purposes of the Corporation in such manner, or to such organization or organizations organized for purposes substantially the same as the Corporation and organized and operated exclusively for not-for-profit purposes which at the time qualify it as an

exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax law, as the board of directors shall determine.

ARTICLE III

Term of Existence

The Corporation shall have perpetual existence.

ARTICLE IV

Resident Agent and Principal Office

Section 4.1. Resident Agent. The name and post office address of the resident agent of the corporation are James Brown, One Merchants Plaza, Suite 845 East, Indianapolis, Indiana 46255.

Section 4.2. Principal Office. The post office address of the principal office of the Corporation is One Merchants Plaza, Suite 875 South, Indianapolis, Indiana 46255.

ARTICLE V

Membership

Section 5.1. Members. Every record owner of a fee simple title to any lot or lots in the Subdivision shall be a member of the Corporation. If title to any lot is held by more than one person, each of such persons shall be a member. An owner of more than one lot shall be entitled to one membership for

each such lot. A corporate owner of a lot shall be entitled to designate one person as a member. Each such membership or memberships shall be appurtenant to the lot upon which it is based and shall transfer automatically by voluntary or involuntary conveyance of the title to that lot. No person or entity other than an owner of such lot may be a member of the Corporation, and a membership in the Corporation may not be transferred except in connection with the transfer of title to that lot.

Memberships in the Corporation shall not be transferred, pledged or alienated in any way, except upon the transfer of the record title of a lot and then only to such transferee, by assignment, intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. It shall be the responsibility of each owner, upon becoming a member, to so notify the Corporation in writing, and until so notified, the Corporation may continue to carry the name of the former owner as a member, in its sole discretion. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Corporation. In the event the owner of any lot should fail or refuse to transfer the membership registered in his name to the transferee of title of such lot, the Corporation shall have the right to record the transfer upon the books of the Corporation and issue a new membership to the transferee, and thereupon the old membership outstanding in the name of the transferor shall be null and void as though the same had been surrendered.

Section 5.2. Classes . The Corporation shall have two classes of members. Such classes of members shall constitute the members of the Corporation.

Class A. Class A members shall be all of the owners of lots in the Foxcliff Estates South Subdivision except the Developer.

Class B. Class B members shall be the Developer.

Section 5.3. Voting Rights. CLASS A MEMBERS. When more than one person holds title to 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 vote be cast with respect to any one lot. There can be no split vote. Prior to or at the time of any meeting at which a vote is to be taken, each co-owner or other person entitled to a vote at such meeting shall file with the Secretary of the Corporation the name of the voting co-owner or other person entitled to vote at such meeting, unless such co-owner or other persons have filed a general voting authority with the Secretary applicable to all votes until rescinded.

CLASS B MEMBERS. The Class B members shall be entitled to two (2) votes for each lot owned. However, Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.

Section 5.4. Suspension of Voting Rights. In the event any owner shall be in arrears in the payment of any amount due under any of the provisions of these Articles, the Declaration, or the By-Laws of the Corporation for a period of thirty (30) days, such owner's right to vote as a member of the Corporation shall automatically be suspended and shall remain suspended until all payments are brought current and all defaults remedied.

ARTICLE VI

Board of Directors

Section 6.1. Number. The initial board of directors shall consist of three (3) directors. The exact number of directors shall be specified from time to time in the By-Laws of the Corporation or by a vote of the members at an annual meeting. The minimum number of directors so specified shall be three (3) and the maximum number shall be fifteen (15). Until the annual meeting of the members of 1990, at least one (1) member of the board of directors shall be a representative designated by Newcorp, Inc., or its successor.

Section 6.2. Qualifications. Each director shall be a member of the Corporation or a representative designated by any corporate member and shall have such qualifications as may be specified from time to time in the By-Laws of the Corporation or required by law.

Section 6.3. Initial Board of Directors. The names and addresses of the initial board of directors of the Corporation are:

| <u>Name</u> | <u>Address</u> | <u>City, State & Zip</u> |
|---------------------|--|-------------------------------|
| Bruce A. Wooldridge | One Merchants Plaza Suite 875 South | Indianapolis, IN 46255 |
| <u>Chris Heath</u> | <u>One Merchants Plaza</u> <u>Suite 875 South</u> | <u>Indianapolis, IN 46255</u> |
| <u>James Brown</u> | <u>One Merchants Plaza</u> <u>Suite 375 South</u> | <u>Indianapolis, IN 46255</u> |

Section 6.4. Removal. Any director, except for the representative designated by Newcorp pursuant to Section 6.1, may be removed with cause by the board of directors whenever three-quarters of the remaining members of such board shall vote in favor of such removal.

ARTICLE VII

Name and Address of Incorporator

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

| <u>Name</u> | <u>Address</u> | <u>City, State & Zip</u> |
|--------------------|--|-------------------------------|
| <u>Chris Heath</u> | <u>One Merchants Plaza</u> <u>Suite 875 South</u> | <u>Indianapolis, IN 46255</u> |

ARTICLE VIII

Statement of Property

The Corporation will take over the ownership of no property at or upon its incorporation.

ARTICLE IX

Provisions for Regulation of Business and Conduct of Affairs of Corporation

Section 9.1. Place of Meetings. Meetings of the members

and meetings of the board of directors of the Corporation' shall be held at such places, either within or without the State of Indiana, as shall be specified in the respective calls and notices or waivers of notice of such meetings given in accordance with the By-Laws of the Corporation.

Section 9.2. Indemnification.

(a) The Corporation shall indemnify any person as of right who is or was a director, officer, or employee of this Corporation, or is or was serving as a director, officer, or employee of another corporation, partnership, or other enterprise at the request of the Corporation, against expenses (including attorneys' fees), judgments, fines, penalties, and amounts paid in settlement reasonably incurred by such person, to the fullest extent now or hereafter permitted by law, in connection with or resulting from any claim, action, suit, or proceeding (whether actual or threatened, civil, criminal, administrative, or investigative, or in connection with an appeal relating thereto), in which such person may be involved as a party or otherwise by reason of being or having been, a director, officer, or employee of the Corporation or of such other organization; provided, such person acted in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Corporation and, with respect to any criminal action or proceeding, in a manner which he had no reasonable cause to believe was unlawful. The termination of any claim, action, suit, or proceeding by judgment, order,

settlement (whether with or without court approval), conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action, suit or proceeding, in a manner which he had no reasonable cause to believe was unlawful.

(b) Any director, officer, or employee of the Corporation who has been successful as a party on the merits or otherwise in his defense of any claim, action, suit, or proceeding referred to in the first sentence of Section 9.2(a) shall be indemnified as of right against expenses (including attorneys' fees) reasonably incurred by him in connection therewith (except to the extent covered by insurance).

(c) Except as provided in Section 9.2(b) above, any indemnification under Section 9.2(a) shall be made by the Corporation only upon a determination that indemnification of the particular director, officer, or employee improper in the circumstances because such person has met the applicable standards of conduct set forth in Section 9.2(a). Such determination shall be made (i) by the board of directors of the Corporation by a majority vote of a quorum consisting of members of the board of directors who were not parties to such claim, action, suit, or proceeding, or (ii) if such a quorum is not obtainable or if so directed by a majority vote of a quorum consisting of members of the

board of directors who were not parties to such claim, action, suit, or proceeding, by independent legal counsel (who may be regular counsel of the Corporation) in a written opinion, or (iii) by vote of the Members.

(d) The indemnification provided by this Section 9.2 shall not be deemed exclusive of any other rights to which a director, officer, or employee may be entitled under any by-law, resolution, agreement, vote of the Members, or otherwise, and shall continue as to a person who has ceased to be a director, officer, or employee of the Corporation, and shall inure to the benefit of the heirs, executors, and administrators of any such person. The indemnification provided by this Section 9.2 shall be applicable to claims, actions, suits, or proceedings made or commenced after the adoption hereof, arising from acts or omissions to act occurring whether before or after the adoption hereof.

(e) This Corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the Corporation, or who is or was serving at the request of the Corporation as a director, officer, partner, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Section 9.2, together with expenses actually and reasonably

incurred by him in connection with his defense thereof; provided that when and to the extent that the Corporation has purchased and maintained such insurance, it shall have no duty under this Section 9.2 to indemnify any such person to the extent such liability is covered by such insurance.

Section 9.3. 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 9.4. By-Laws. The board of directors of the Corporation shall have the power to adopt and amend the By-Laws of the Corporation, which may contain other provisions consistent with the laws of the State of Indiana, for the regulation and management of the affairs of the Corporation.

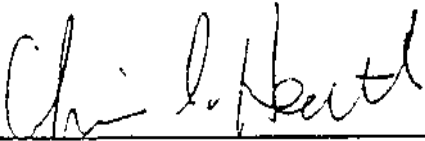
Section 9.5. Powers of the Board of Directors. Subject to any limitation or restriction imposed by law or by these Articles of Incorporation, the board of directors of the Corporation is hereby authorized to exercise, in furtherance of the purposes of the Corporation, all the powers of the Corporation without authorization or approval of the members of the Corporation.

IN WITNESS WHEREOF, the undersigned incorporator executes these Articles of Incorporation and verifies and affirms subject to penalties of perjury that the facts contained herein are true,

representing beforehand to the Secretary of State of the State of Indiana and all persons whom it may concern that a membership list or lists of the above-named Corporation for which a Certificate of Incorporation is hereby applied have heretofore been opened in accordance with the Act, and that at least one (1) person has signed such membership list.

Dated this 13

JUNE, 1985.



(Written Signature)

Chris Heath

(Printed Signature)

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

I, the undersigned, a Notary Public duly commissioned to take acknowledgments and administer oaths in the State of Indiana, hereby certify that Chris Heath, being the Incorporator referred to in ARTICLE VII of the foregoing Articles of Incorporation, personally appeared before me, acknowledged the execution thereof and swore to the truth of the facts therein stated.

WITNESS my hand and Notarial Seal this 14th day of June, 1985.

Charmian Cheesman

, Notary Public My

Commission Expires:

July 9, 1987

My County of Residence:

Marion

This Instrument was prepared by James P. Moloy, Dann Pecar Newman Talesnick & Kleiman, Professional Corporation, 1600 Market Square Center, Indianapolis, Indiana 46204.