

STATE OF INDIANA
OFFICE OF THE SECRETARY OF STATE

CERTIFICATE OF INCORPORATION

OF

FOX RUN OF FISHERS HOMEOWNERS ASSOCIATION, INC.

I, JOSEPH H. HOGSETT, 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 October 31, 1994.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this Thirty-first day of October, 1994


JOSEPH H. HOGSETT, Secretary of State

By 

Deputy

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ARTICLES OF INCORPORATION

OF

FOX RUN OF FISHERS HOMEOWNERS ASSOCIATION, INC.

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

ARTICLE I

Section 1.1. The name of the Corporation is Fox Run of Fishers Homeowners Association, Inc. (hereinafter referred to as the "Corporation").

ARTICLE II

Adoption and Purposes

OCT 31 1994

Section 2.1. Adoption. These Articles of Incorporation creating Fox Run of Fishers Homeowners Association, Inc. are adopted as contemplated by, and in accordance with, the Declaration of Covenants and Restrictions of Fox Run Property Ownership (the "Declaration"). The Declaration was recorded in the Office of the Recorder of Hamilton County, Indiana, as Instrument No. 9408223 February 17, 1994. The Declaration is incorporated herein by reference, and all of the standards, rights, liabilities, covenants and restrictions and other terms and provisions contained in such Declaration and any amendments and supplements thereto shall apply to and govern the interpretation of these Articles and the Code of By-Laws of the Corporation.

Section 2.2. Purposes. The Corporation shall be a mutual benefit corporation. The purposes of the Corporation shall be to provide for the administration and enforcement of the standards, covenants and restrictions contained in the Declaration, to provide for the maintenance, repair, upkeep, replacement, administration, management and operation of the Property, to perform such other functions relating to the operation and maintenance of Fox Run as determined by its Board of Directors to be advisable or appropriate, and to:

(a) Have and exercise all of the powers, rights and privileges and perform all of the duties and obligations of the Corporation as set forth herein and in the Declaration and the Code of By-laws of the Corporation, as the same may be amended from time

to time.

(b) Establish, levy, collect and enforce by any lawful means charges, dues or assessments against any Owner of any Lot or others pursuant to the terms of the Declaration; to pay all expenses in connection with the Corporation's performance of its duties and obligations pursuant to the Declaration including, but not limited to, any fees, taxes or other governmental charges levied or imposed against the property of the Corporation.

(c) Acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in conducting the affairs of the Corporation.

(d) Merge and consolidate with other nonprofit corporations organized for the same or similar purposes.

(e) Have and exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Corporation Act of 1991 of the State of Indiana by law may now or hereafter have or exercise.

Section 2.3. Definitions. Capitalized terms used but not defined herein shall have the meanings attributed to such terms in the Declaration.

ARTICLE III

Period of Existence

Section 3.1. Period of Existence. The period during which the Corporation shall continue is perpetual.

ARTICLE IV

Registered Agent and Registered Office

Section 4.1. Registered Agent and Registered Office. The name of the Registered Agent is Glenn E. Christian and the address of the Registered Office at which the Registered Agent resides is Centex Homes, 8555 North River Road, Suite 100, Indianapolis, IN 46240.

ARTICLE V

Membership

Section 5.1. Members. Every person or entity who owns one or more Lots, including but not limited to Owners and Declarant, shall automatically upon becoming an owner of a Lot be and become a Member of the Corporation. In addition, any original Member or any replacement Member of the Initial Board of Directors (as designated in paragraph 10 of the Declaration) shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a Member of the Board of Directors but shall not be deemed an Owner or Member of the Corporation for any other purpose.

Section 5.2. Rights, Preferences, Limitations, and Restrictions of Classes. All Members of the Corporation shall have the same rights, privileges, duties, liabilities, limitations and restrictions as the other Members. 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 Declaration.

Section 5.3. Voting Rights. With respect to each matter on which a Member of the Corporation is entitled to vote, 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 resident agent of the Corporation. Each Class B Member shall be entitled to four (4) 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

resident agent of the Corporation, (ii) the date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or (iii) January 1, 1999.

ARTICLE VI

Directors

Section 6.1. Number of Directors. The initial Board of Directors shall be composed of three (3) members.

Section 6.2. Election of Directors. All Directors shall be elected by the Members.

Section 6.3. Names and Post Office Addresses of the Directors. The names and post office addresses of the initial Board of Directors are:

<u>Name</u>	<u>Number and Street or Building</u>	<u>City and State</u>	<u>Zip Code</u>
Glenn Christian	Centex Homes, 8555 North River Road, Suite 100	Indianapolis, IN	46240
Brett Wilson	Centex Homes, 8555 North River Road, Suite 100	Indianapolis, IN	46240
Craig Seltenright	Centex Homes, 8555 North River Road, Suite 100	Indianapolis, IN	46240

ARTICLE VII

Incorporator

Section 7.1. Name and Post Office Address. The name and post office address of the incorporator of the Corporation is Philip A. Nicely, 8888 Keystone Crossing, Suite 1201, Indianapolis, Indiana 46240.

ARTICLE VIII

Provisions for the Regulation and Conduct of the Affairs of the Corporation

Section 8.1. Contributions and Liabilities of Members. No Member of the Corporation nor any property of a Member shall be subject to any liability for any debts of the Corporation with the sole exception of the Member's Regular Assessments and Special Assessments which both (i) are specifically approved by a majority of Directors elected by the Members in accordance with these Articles of Incorporation and (ii) are, to the extent of the Member's proportionate share thereof, the personal obligation of the Member, or a lien upon property of the Member, pursuant to the terms and provisions of the Declaration.

Section 8.2. Code of By-Laws. The power to make, alter, amend or repeal the Code of By-Laws and the rules and regulations for the conduct of the affairs of the Corporation, including the power to elect officers of the Corporation, shall be vested in the Board of Directors; provided, however, any amendment that would change any provision of the Code of By-Laws that are a part of the Declaration must be approved in accordance with the amendment provisions or requirements of such Code of By-Laws; provided, however, that no acts of the Board of Directors shall be inconsistent with or contradictory to these Articles of Incorporation or any applicable law.

Section 8.3. Dissolution. The Corporation may be dissolved only with the written consent of not less than a majority of the votes of the Members. Upon dissolution of this Corporation, any assets remaining after payment of any known debts and obligations shall be transferred or distributed ratably to the Members consistent with the provisions of I.C. 23-17-22-5(a)(7).

Section 8.4. Amendment of Articles of Incorporation. These Articles of Incorporation may be amended with the consent of a majority of the votes of the Members, but no amendment may modify or change any provision of the Declaration, unless such change is approved in accordance with the provision of the Declaration for amendment to the Declaration.

Section 8.5. Non-Liability of Directors. The Directors shall not be liable to the Members of the Corporation for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith or contrary to the provisions of the Articles of Incorporation or Code of By-Laws. The Directors shall have no

personal liability with respect to any contract made by them on behalf of the Corporation, and in all matters the Board shall act for and on behalf of the Corporation and as its agent.

Section 8.6. Additional Indemnity of Directors, Officers and Employees. The Corporation shall indemnify any person made a party to any action, suit or proceeding by reason of the fact that he is or was a director, officer, employee or agent of the Corporation against all liability and reasonable expense incurred or suffered by such person in connection therewith, if:

- (a) the individual's conduct was in good faith; and
- (b) the individual reasonably believed:
 - (i) in the case of conduct in the individual's official capacity with the Corporation, that the individual's conduct was in its best interests; and
 - (ii) in all other cases, that the individual's conduct was at least not opposed to the Corporation's best interests; and
- (c) in the case of any criminal proceeding, the individual either:
 - (i) had reasonable cause to believe the individual's conduct was lawful; or
 - (ii) had no reasonable cause to believe the individual's conduct was unlawful.

The terms used in this section shall have the same meaning as set forth in I.C. 23-17-16. Nothing contained in this section shall limit or preclude the ability of the Corporation to otherwise indemnify or to advance expenses to any director, officer, employee or agent.

The Corporation may also reimburse to any such person the reasonable cost of settlement of, or the amount of any judgment, fine or penalty rendered or assessed in, any such claim, action, suit or proceeding, if it shall be found by a majority of a committee composed of the directors not involved in the matter in controversy (whether or not a quorum) in their judgment reasonably exercised that such person was not guilty of gross negligence or misconduct in the performance of his duties to the Corporation (or such other entity) and, with respect to any criminal action or proceeding, acted in a manner which he had no reasonable cause to believe was unlawful. In making such findings, and notwithstanding any adjudication in such action, suit or proceeding, such person shall not be considered or deemed to be guilty of or liable for gross negligence

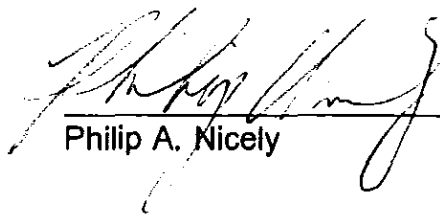
or misconduct in the performance of his duties to the Corporation (or such other entity) where, acting in good faith, he relied upon the books and records of the Corporation (or such other entity) or statements or advice made by or prepared by any officer, employee or agent of the Corporation (or such other entity) or any accountant, attorney or other person, firm or corporation employed by the Corporation (or such other entity) to render advice or service, unless he had actual knowledge of the falsity or incorrectness thereof; nor shall such person be deemed guilty of or liable for gross negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors of the Corporation.

The Corporation may pay in advance of the final disposition of any such claim, action, suit or proceeding the expenses incurred in defending the same pursuant to the restrictions of I.C. 23-17-16-10.

The rights of indemnification, reimbursement and advance payments set forth above shall not be deemed exclusive of any other rights to which such person may be entitled apart from the provisions of this section, and shall inure to the benefit of the heirs and legal representatives of such person.

Section 8.7. Reliance by Directors on Books of Account, etc. Each Director of the Corporation shall be fully protected in relying in good faith upon (a) the books of account of the Corporation, (b) statements prepared by any of its officers and employees as to the value and amount of the assets, liabilities and net profits of the Corporation, or any of such items, or (c) statements or advice made by or prepared by any officer or employee of the Corporation or any accountant, attorney, other person or firm employed by the Corporation to render advice or service.

IN WITNESS WHEREOF, the undersigned does hereby execute these Articles of Incorporation and certifies to the truth of the facts herein stated, this 31st day of October, 1994.



Philip A. Nicely

This instrument prepared by Philip A. Nicely, Attorney at Law, Bose, McKinney & Evans, 8888 Keystone Crossing, Suite #1201, Indianapolis, Indiana 46240.