

**ARTICLES OF INCORPORATION**

**OF**

**SADDLE CREEK HOMEOWNERS ASSOCIATION, INC**

APPROVED  
AND  
FILED  
IND. SECRETARY OF STATE

RECEIVED  
CORPORATIONS DIV.  
SEP 3 11:17  
SUE ANNE HILROY

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

**ARTICLE I**

**Name**

**Section 1.01. Name.** The name of this Corporation shall be Saddle Creek Homeowners Association, Inc.

**Section 1.02. Type of Corporation.** The Corporation is a mutual benefit corporation.

**ARTICLE II**

**Purposes and Powers**

**Section 2.01. Primary Purposes.** The purposes for which this Corporation is formed are to own, manage, maintain, reserve, repair and reconstruct the Common Area, a subdivision in Clay Township, Hamilton County, Indiana, and to exercise all of the power and privileges and to perform all of the duties and obligations of the Corporation as set forth in the Declaration and all Supplementary Declarations.

**Section 2.02. Additional Purposes.** In addition, the Corporation is formed for the promotion of the health, safety and welfare of the residents of Saddle Creek and other non-profitable purposes that are authorized by the Act and permitted to be carried on by an organization exempt from Federal income taxation under the provisions of Section 528 of the Internal Revenue Code of 1986 (hereinafter referred to as the "Code") and the Regulations issued pursuant thereto, as amended.

**Section 2.03. Specific Powers.** Subject to any specific written limitations or restrictions imposed by the Act, by the Code, by other law, or by the Declaration or the Articles, and solely in furtherance of but not in addition to the purposes set forth in Section 2.01 and 2.02 of these Articles, the Corporation shall have the following specific powers:

- (a) **To Manage, etc.** To manage, maintain, repair and replace the Common Area for

the benefit and use of the members of the Corporation subject to such restraints or suspensions of use and voting rights of members as are provided herein, in the By-laws and in the Declaration.

(b) **To Make Assessments.** To fix, levy and collect assessments and to enforce payment thereof by all lawful means.

(c) **To Promulgate Rules.** To promulgate such rules and regulations and perform such deeds as are deemed necessary to achieve the aforesaid purposes.

(d) **To Insure.** To secure from insurers licensed and approved in the State of Indiana, appropriate fire/property damage coverage, comprehensive general liability coverage and such other forms of insurance as may be deemed necessary or appropriate.

(e) **To Secure Services.** To secure professional managerial services by employing a professional manager, contracting with a professional management service or entity, or otherwise, which services may include administrative, managerial, bookkeeping, legal, architectural, engineering, maintenance, repair, construction and other services.

(f) **To Acquire and Dispose of Property.** To acquire by give, purchase or other means, to own, hold, enjoy, lease, operate, maintain, convey, sell, transfer, mortgage or otherwise encumber or dedicate for public use, real or personal property in connection with the business of the Corporation subject to the provisions of the Declaration.

(g) **To Borrow.** To borrow money and, subject to the provisions of the Declaration, to give, as security therefor, a mortgage or other security interest in any or all real or personal property owned by the Corporation, or a pledge of monies to be received pursuant to the provisions of the Declaration or any Supplemental Declaration, and to assign and pledge its right to make Assessments and its rights to claim a lien therefor.

(h) **To Appoint a Fiscal Agent.** To appoint any person as its fiscal agent to collect all Assessments and charges levied by the Corporation and to enforce the Corporation's liens for unpaid Assessments and charges or any other lien held by the Corporation.

(i) **To Make Contracts.** To enter into, perform, cancel and rescind all kinds of contractual obligations, including the guarantee of the obligations and performance of others.

(j) **To Act With Others.** To perform any act which the Corporation acting alone has the power and capacity to perform by acting as a partner or otherwise in association with any Person or Persons, whether legally constituted or informally organized.

(k) **To Pay.** To pay all operating expenses, including all licenses, taxes or governmental charges levied or imposed against the property.

(l) **To Merge.** To participate in mergers and consolidations with other nonprofit corporations organized for the same purpose or annex additional real estate as provided in the Declaration.

(m) **To Otherwise Act.** To have and to exercise any and all powers, rights and privileges which a corporation organized under the Act may now or hereafter have or exercise.

**Section 2.04. Limitations Upon Powers.**

(a) **Earnings.** No member of the Corporation shall have or receive any earnings from the Corporation, except a member who is an employee of the Corporation, in which event he may receive fair and reasonable compensation for his services as an employee; and a member may also receive payments of principal and interest at a rate not exceeding that from time to time permitted by the Act on funds loaned or advanced by him to the Corporation.

(b) **Loans to Directors.** The Corporation shall make no advancements for services to be performed in the future, nor any loan of money or property to any director or officer of the Corporation.

(c) **Dissolution.** In the event of dissolution of the Corporation, all assets remaining after payment of all debts of the Corporation, including advances and loans of members of the Corporation, and, if so authorized by the Board of Directors, distribution to members of the Corporation of such amounts as may be authorized by the Act, shall be dedicated by the Board of Directors to an appropriate public agency to be used for purposes similar to those for which this corporation was organized. In the event such dedication is refused acceptance, such assets shall be transferred by the Board of Directors to the State of Indiana or any instrumentality or subdivision thereof exclusively for public purposes, or to any nonprofit corporation whose purposes are substantially the same as those of the Corporation and which, at the time of transfer, is exempt from Federal taxation under Sections 501(c)(3), 501(c)(4) or 528 of the Code of the corresponding provisions of any future United States Internal Revenue Law. Any such assets not so dedicated or transferred by the Board of Directors shall be disposed of in accordance with the Act. No member, director or officer of the Corporation, or any private individual, shall be entitled to share in the distribution of any of the assets of the Corporation on dissolution of the Corporation, except as otherwise provided in these Articles or in the Act.

(d) **Prohibited Activities.**

(i) No part of the net earnings of the Corporation shall inure to the benefit of any member, director or officer of the Corporation, or to any private individual;

(ii) No substantial part of the activities of the Corporation shall be devoted

to attempting to influence legislation by propaganda or otherwise within the meaning of the prospective provisions of the Code;

(iii) The Corporation shall not directly or indirectly participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of, or in opposition to, any candidate for public office;

(iv) Notwithstanding any other provision of these Articles, the Corporation shall not conduct or carry on any activities not permitted to be conducted or carried on by any organization exempt from Federal taxation under Section 528 of the Code and Regulations issued pursuant thereto, as amended, or the corresponding provisions of any future United States Internal Revenue law, if the effect thereof is to subject the gross income of the Corporation to federal income taxation at rates established for corporations engaged in business for profit unless the purposes of the Corporation set forth in Section 2.01 of these Articles cannot otherwise be achieved.

### **ARTICLE III**

#### **Period of Existence**

**Section 3.01 Period of Existence.** The period during which the corporation shall continue is perpetual.

### **ARTICLE IV**

#### **Registered Agent and Registered Office**

**Section 4.01 Registered Agent.** The name and address of the Registered Agent in charge of the Corporation's principal office is John J. Kennelly, 123 Village Drive East, Carmel, Indiana 46032.

**Section 4.02 Registered Office.** The post office address of the registered office of the Corporation is 123 Village Drive East, Carmel, Indiana 46032.

### **ARTICLE V**

#### **Membership**

**Section 5.01. Classes of Membership.** The Corporation shall have the following classes of membership, with the following voting rights:

- (a) **Class A.** Class A members shall be an Owner 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 (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 (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.
- (b) **Class B.** Class B members shall be Declarant, 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, and Pulte Homes of Indiana. Each Class B member shall be entitled to five (5) votes for each Lot of which it is the Owner and five (5) votes for each individually numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the Real Estate, or any part thereof, of which it is the Owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined in this Declaration, on all matters requiring a vote of the members of the Corporation. The Class B membership shall cease and terminate upon 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 Declarant no longer owns any Lots nor any portion of any individually numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the Real Estate, or any part thereof, or (iii) December 31, 2005 (the "Applicable Date"). After the Applicable Date, Class B memberships shall be converted to Class A memberships, and each former Class B member shall be entitled to one (1) Class A membership for each Lot owned and for each individually numbered parcel of land shown upon, and identified as a lot on, any recorded subdivision plat of the Real Estate, or any part thereof, of which it is then the owner (either as to the entire numbered parcel or any part thereof) which is not a "Lot" as defined herein.
- (c) **Special.** Until the Applicable Date, there shall be three (3) additional Special members of the Corporation, being the persons from time to time appointed by Declarant to serve on the "Initial Board" pursuant to Section 6.01 of Article VI hereof. Persons who are special members shall not be deemed or considered members of the Corporation nor Owners of Lots for any purpose other than to qualify to act as members of the Initial Board. Special members shall have no voting rights on any matter submitted to a vote of the members [unless such Special member is also a Class A member, in which event his voting rights shall be governed by subsection (a) of this Section 5.01].

**Section 5.02. Termination of Membership.**

(a) Class A Members. Membership in the Corporation shall lapse and terminate when a Class A member ceases to be an Owner.

(b) Class B Member. Membership in the Corporation shall lapse and terminate as provided in Section 5.01(b) of these Articles.

**Section 5.03. Suspension of Membership Rights.** No Class A or Class B member may be expelled from membership in the Corporation for any reason. The Board of Directors shall have the right to suspend the voting rights of a Class A member for a period during which any Assessment or charge owed by the Member remains unpaid in excess of thirty (30) days.

**Section 5.04 Meetings of Members.** All meetings of the Members shall be held at such place within the State of Indiana as may be designated by the Board of Directors pursuant to the provisions of the By-Laws.

**Section 5.05 No Preferences, etc.** There shall be no other preferences, limitations, or restrictions with respect to the relative rights of the Members.

**Section 5.06. Board of Directors.** Following the Applicable Date, the Owners shall elect a Board of Directors of the Association as prescribed by the Association's Articles and By-Laws. The Board of Directors shall manage the affairs of the Association.

**ARTICLE VI**

**Directors**

**Section 6.01. Number of Directors.** The initial Board of Directors of the Corporation shall consist of three (3) members. The number of Directors of the Corporation shall be specified from time to time in the By-Laws, but the minimum number shall be three (3) and the maximum number shall be five (5) and, if the By-Laws fail to specify the number, then the number shall be three (3).

**Section 6.02. Names and Post Office Addresses.** The names and post office addresses of the initial members of the Board of Directors are as follows:

John J. Kennelly  
123 Village Drive East  
Carmel, Indiana 46032

Kathleen M. Kennelly  
123 Village Drive East  
Carmel, Indiana 46032

Patrick J. Beirne  
c/o Pulte Homes of Indiana  
11711 N. Pennsylvania, Suite 190  
Carmel, Indiana 46032

## ARTICLE VII

### Incorporator

**Section 7.01. Name and Address of Incorporator.** The name and post office address of the incorporator is John J. Kennelly, 123 Village Drive East, Carmel, Indiana 46032.

## ARTICLE VIII

### Statement with Respect to Property

**Section 8.01. Property of Corporation.** The Corporation, upon its incorporation, has no property of value.

## ARTICLE IX

### Provision for Regulation and Conduct of the Affairs of the Corporation

**Section 9.01. Management of Corporation.** The affairs of the Corporation shall be managed by the Board of Directors.

**Section 9.02. Code of By-Laws.** The Board of Directors of the Corporation shall have the power, without the assent of the Members, to make, alter, amend, or repeal the By-Laws.

**Section 9.03. Officers.** The officers of the Corporation shall consist of a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as may be prescribed by the By-Laws or prescribed by resolution of the Board of Directors in the manner specified in the By-Laws. The offices of President and Secretary shall not be occupied by the same Person.

**Section 9.04. Initial Board.** The initial Board of Directors, named in Section 6.02 hereof, shall serve as the Board of Directors of the Corporation until the Applicable Date and, in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, every such vacancy shall be filled by an individual appointed by Declarant. Any such individual appointed by Declarant shall thereafter be deemed a member of the Initial Board.

**Section 9.05. Term of Office of Directors and Officers.** Each officer and director shall hold his office for the term specified in the By-Laws, but no term shall end until a successor is elected and qualified for the office to be vacated.

**Section 9.06. Removal of Member of the Board of Directors.** After the Applicable Date, any member of the Board of Directors may be removed, with or without cause, at a meeting of the Members called for such purpose by the affirmative vote of two-thirds (2/3) of all the votes allocated to Members. Prior to the Applicable Date, any Director may be removed by Declarant.

**Section 9.07. Amendment of Articles of Incorporation.** The Corporation reserved the right to amend, alter, change or repeal any provisions contained in the Articles or any amendment hereto, in any manner now or hereafter prescribed or permitted by the Act or any amendment thereto; but such power of amendment does not authorize any amendment that would permit any part of the net earnings of the Corporation to inure to the benefit of any private individual, that would modify the provisions of Section 2.04 if such modification would have the effect of disqualifying this Corporation as an organization exempt from Federal income taxation under the provisions of Section 528 of the Code, as amended, or such equivalent provision as may hereafter exist from time to time, or that would be in conflict with the provisions of the Declaration or any Supplemental Declaration.

## ARTICLE X

### Definitions

**Section 10.01. Terms.** The following terms, as used in these Articles, and in the By-Laws, unless the context clearly requires otherwise, shall mean the following:

- (a) "Act" shall mean and refer to the Indiana Nonprofit Corporation Act of 1991, as amended;
- (b) "Applicable Date" shall mean and refer to the date determined pursuant to Section 5.01(b) hereof.
- (c) "Approvals" shall mean and refer to approvals, determinations, permissions, or consents required herein and shall be deemed given if they are given in writing, signed with respect to the Declarant or the Corporation, by the President or vice-President thereof, and with respect to the Committee, by two (2) members thereof;
- (d) "Articles" shall mean and refer to the Articles of Incorporation of the Corporation, as the same may be amended from time to time;
- (e) "Board of Directors" shall mean and refer to the governing body of the



Corporation elected, selected or appointed as provided for in the Articles, By-Laws and the Declaration;

- (f) "By-Laws" shall mean and refer to the Code of By-Laws of the Corporation, as the same may be amended from time to time;
- (g) "Committee" shall mean and refer to the "Saddle Creek Building Control Committee", the same being the committee or entity established pursuant to Article VIII, Section 1 of the Declaration for the purposes therein stated;
- (h) "Common Areas" shall mean and refer to (i) all portions of the Real Estate shown on any recorded subdivision plat of the Real Estate, or any part thereof, which are not dedicated to the public; and which are not identified as lots on any such plat (such as public streets), whether such plat is heretofore or hereafter recorded, (ii) to the extent hereinafter established, such portions of the Real Estate as are herein declared to be Common Areas even though located on or constituting part of one or more such lots shown on any such plat, and (iii) to the extent hereinafter established, such improvements located, installed or established in, to, under, across or through-the-Real Estate as are herein declared to be Common Areas whether located, installed or established entirely or partially on Lots (as herein defined) or portions of the Real Estate which are not Lots, or both;
- (i) "Common Expenses" shall mean and refer to expenses of administration of the Corporation, and expenses for the upkeep, liability insurance, maintenance, repair and replacement of the Common Area, and all sums, costs and expenses declared by this Declaration to be Common Expenses;
- (j) "Corporation" shall mean and refer to Saddle Creek Homeowners Association, Inc., an Indiana nonprofit corporation which Declarant has caused, or will cause, to be incorporated under said name or similar name, its successors and assigns;
- (k) "Declarant" shall mean and refer to Saddle Creek Development Company, an Indiana corporation and any successors and assigns of whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but no limited to, any mortgages acquiring title to any portion of the Real Estate pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant;
- (l) "Declaration" shall mean and refer to the Declaration of Covenants and Restrictions of Saddle Creek as recorded in the Office of the Recorder of Hamilton County, Indiana, and as amended from time to time;

- (m) **"Drainage System" shall mean and refer to the open drainage ditches, the subsurface drainage tiles, pipes and structures, the dry and wet retention and/or detention areas, and the other structures, fixtures, properties, equipment and facilities located on the Real Estate and designed for the purpose of controlling, retaining or expediting the drainage of surface and subsurface waters from, over and across the Development, including but not limited to those shown or referred to on a Plat, all or part of which may be established as legal drains subject to the jurisdiction of the Hamilton County Drainage Board, its successors or assigns;**
- (n) **"Dwelling Units" shall mean and refer to any building, structure or portion thereof situated on the Real Estate designed and intended for use and occupancy as a residence by one (1) single family;**
- (o) **"Lot" shall mean and refer to any and each portion of the Real Estate (excluding any part of the Common Areas) designed and intended for use as a building site for, or developed and improved for use as, a Dwelling Unit (which shall be deemed to include any other buildings or improvements appurtenant to such Dwelling Unit), as designated by Declarant by its deed of the same to another Person.**
- (p) **"Mortgagee" shall mean and refer to the holder of a recorded first mortgage lien on a Lot or Dwelling Unit;**
- (q) **"Owner" shall mean and refer to (i) the Declarant, as to each Lot owned by it and as to each individually numbered parcel of land shown upon, and identified as a lot on any recorded subdivision plat of the Real Estate (or any part thereof) of which it is the owner (either as to the entire numbered parcel or any part thereof) which is not a Lot, and (ii) the recorded owner, whether one or more Persons, of the fee simple title to any Lot, provided, however, that Owner shall not include or mean or refer to a mortgagee or tenant unless and until such mortgagee or tenant has acquired title to any Lot, but upon so acquiring title to any Lot a mortgagee or tenant shall be an Owner;**
- (r) **"Person" shall mean and refer to an individual, firm, corporation, partnership, Association, trust or other legal entity, or any combination thereof;**
- (s) **"Real Estate" shall mean or refer to all parcels of real estate which, from time to time, have been subjected to, and are, at any time subject to the Declaration;**
- (t) **"Restrictions" shall mean and refer to the agreements, conditions, covenants,**

restrictions, easements, assessments, charges, liens and all other provisions set forth in the Declaration, as the same may be amended from time to time;

- (u) "Supplemental Declaration" shall mean and refer to any Plat or supplemental declaration of covenants, conditions or restrictions that may be recorded and which extends the provisions of the Declaration to a Section and contains such complementary or supplementary provisions for such Section as are required or permitted by the Declaration.

**Section 10.02. Other Terms.** Any undefined term used herein or in the By-Laws shall, unless the context required otherwise, have the meaning set forth in Section 1 of the Declaration.

The undersigned, being the sole Incorporator designated in Article 7, does hereby adopt these Articles of Incorporation, representing by his execution hereof to the Secretary of State of the State of Indiana and all persons whom it may concern that a membership list of the Corporation for which a Certificate of Incorporation is hereby applied for has heretofore been opened in accordance with the Act and that at least one (1) person has signed such membership list.

IN WITNESS WHEREOF, the undersigned executes these Articles of Incorporation and verifies, subject to penalties of perjury, that the facts contained herein are true this 26th day of September, 1997.

**SADDLE CREEK DEVELOPMENT COMPANY**

By:

  
John J. Kennelly, President

Prepared by:

James J. Nelson  
NELSON & FRANKENBERGER  
3021 East 98th Street  
Suite 220  
Indianapolis, Indiana 46280  
(317) 844-0106

f:\user\guest\incorp.a-p