

## ARTICLES OF INCORPORATION

### OF

#### **MCFALL HOMEOWNERS ASSOCIATION, INC.**

A corporation is formed under the Kentucky Nonprofit Corporation Act, Chapter 273 of the Kentucky Revised Statutes ("KRS"), the organizational details of which are as follows:

1. Name. The Corporation's name shall be **McFall Homeowners Association, Inc.**

2. Duration. The Corporation's duration shall be perpetual.

3. Definitions. As used in these Articles of Incorporation the following terms shall have the following meaning:

a. "McFall Subdivision" shall mean the property consisting of lots 7, 8, 9, 10, 11, 12, 13A, 13B and 13C in Unit 1 of the McFall Subdivision, Woodford County, Kentucky.

b. "Declaration of Restrictions" shall mean any Declaration of Restrictions, as amended from time to time, affecting any portion of McFall Subdivision, including the Deed of Restrictions, dated November 4, 1998 and recorded in Deed Book 187, Page 211 in the Woodford County Clerk's office.

c. "Residential Unit" or "Lot" shall mean each single family residential lot or similar property, the owner of which is a member of the Corporation. Every Residential Unit owner shall be deemed to have a membership in the Corporation. No owner, whether one or more persons, shall have more than one (1) membership per Lot owned. In the event the owner of a Lot is more than one (1) person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse, subject to the provisions of these Articles and the bylaws of the Corporation ("Bylaws"). The membership rights of a Lot owned by a corporation, company or partnership shall be exercised by the individual designated in a written instrument provided to the Secretary, subject to the provisions of these Articles and the Bylaws.

d. "Members" shall be entitled to one (1) equal vote for each Lot in which they hold the interest required for membership; provided, no owner shall be entitled to a vote for any Lot until such time as the Lot is subject to the full annual assessment. There shall be

only one (1) vote per Lot. Unless otherwise specified in these Articles or the Bylaws, the vote for each Lot shall be exercised by the voting member.

In any situation where a member is entitled personally to exercise the vote for his Lot and more than one (1) person holds the interest in such Lot required for membership, the vote for such Lot shall be exercised as those persons determine among themselves and advise the Secretary of the Corporation prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended if more than one (1) person seeks to exercise it.

4. Purposes. The Corporation is organized under the Kentucky Nonprofit Corporation Act as a nonstock, nonprofit corporation and the purposes and objects for which and for any of which the Corporation is formed are as follows:

a. To promote the social welfare and serve the common good and general welfare of the members of the Corporation and to construct, operate, maintain and repair any common structure, including, the street, fences, facility, right-of-way or other common improvements, whether owned by the Corporation or not, within the McFall Subdivision.

b. Notwithstanding the generality of the foregoing, the Corporation shall not (1) devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise, or (2) directly or indirectly participate in, intervene in (including the publishing or distributing of statements), any political campaign on behalf or in opposition to any candidate for public office.

5. Powers. In addition to all other powers the Corporation may have pursuant to the Kentucky Nonprofit Corporation Act, including KRS 273.171, the Corporation shall have the powers to:

a. Exercise and enforce any right or privilege assigned to it under any Declaration of Restrictions or aforementioned plat of record or the Articles together with and including the responsibility for the exclusive management and control of the common areas and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas, detention basins, walkways, pools, streets, right-of-way, or ground); and shall keep it in good, clean, attractive, and sanitary condition, order and repair. The Corporation, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Corporation, shall accept any real or personal property, leasehold, or other property interests within the McFall Subdivision properties conveyed to it by the Developer or any other person.

b. Assess, levy and collect assessments against each Residential Unit and against members of the Corporation. Each Residential Unit owner shall be responsible for paying assessments, costs of maintenance of all Common Areas within the Subject Property, including, without limitation, maintaining any private roads or right-of-ways within the Subdivision, and greenspace between the Lots, regardless of ownership and all other common areas as referenced

herein including but not limited to all fences, berms, landscaping, pathways, private roads or walkways, and regardless of the fact that maintenance may be performed by the Corporation.

In addition to the general assessments authorized in this Article, the Corporation may levy a Special Assessment or Special Assessments in any year applicable to that year; provided, such assessment shall have the affirmative vote or written consent of voting members or their alternates, representing fifty-one percent (51%) of the Members.

All assessments, together with interest at the rates set forth in the Declaration of Restrictions or set forth in the Bylaws, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such Lot at the time the assessment arose, and his or her or its grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first mortgagee who obtains title to a Lot pursuant to the remedies provided in the mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitations, acceleration of the annual General Assessment for delinquents. Unless the Board otherwise provides, the General Assessment shall be paid within thirty (30) days from the date of the assessment.

No owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the Unit. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Corporation or Board to take some action or perform some function required to be taken or performed by the Corporation or Board under these Articles, the Declaration of Restrictions or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Corporation, or from any action taken to comply with any law, ordinance, or which any order or directive of any municipal or other governmental authority the obligation to pay assessments being a separate and independent covenant on the part of each owner.

The lien of assessments, including interest, late charges (subject to the limitations of Kentucky law), and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any first mortgage upon any Lot. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or non-judicial foreclosure of a first mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the mortgagee holding a first mortgage of record or other purchaser of a Lot obtains title, its successors and assigns shall not be liable for the share of the common expenses or assessments by the Corporation chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Lots, including such acquirer, its successors and assigns.

c. Obtain and maintain insurance coverage as the Board of Directors may determine.

d. The Board of Directors shall have the authority and standing, on behalf of the Corporation, to enforce in courts of competent jurisdiction action of the Corporation or decisions of any of its committees.

e. The Corporation, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the McFall Subdivision properties, which rules and regulations shall be consistent with the rights and duties established by these Articles of Incorporation. Sanctions may include reasonable monetary fines and suspension of the right to vote. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the Bylaws of the Corporation. In addition, the Corporation, through the Board, may, by contract or other agreement, enforce county ordinances or permit the County of Woodford to enforce ordinances on the McFall Subdivision properties for the benefit of the Corporation and its members.

6. Internal Affairs. Provisions for the regulation of the internal affairs of the Corporation, including provisions for the distribution of assets on dissolution or final liquidation, are:

a. No part of the Corporation's net earnings shall inure to the benefit of any individual or member of the Corporation, except 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 paragraphs 4 and 5 hereof.

b. Upon the dissolution or final liquidation of the Corporation any remaining assets of the Corporation shall be distributed to one or more organizations, designated by the Board of Directors at that time, to be used in such manner as in the judgment of the Board of Directors will best accomplish the general purposes of the Corporation. Each of such organizations shall operate to be exempt from federal tax under § 501(c)(3), § 501(c)(4) or § 501(c)(7) of the Internal Revenue Code of 1986 as amended, or under corresponding legislation if the Internal Revenue Code of 1986 is not then in effect.

7. Principal Office. The mailing address of the Corporation's principal office is 300 McFall, Versailles, Kentucky 40383.

8. Registered Office and Agent. The address of the Corporation's initial Registered Office shall be 163 East Main Street, Suite 200, Lexington, Kentucky 40507, and the name of its initial Registered Agent at such address shall be Jonathan L. Gay.

9. Board of Directors.

a. The number of directors constituting the Corporation's initial Board of Directors shall be three (3), and the names and addresses of the persons who are to serve as the initial directors are:

<u>Name</u>	<u>Address</u>
Kimberly Frye	300 McFall Versailles, KY 40383
Jeffrey Frye	300 McFall Versailles, KY 40383
Joseph Gay	451 McFall Versailles, KY 40383

b. A director may be removed from office pursuant to any procedure therefor provided in the Bylaws of the Corporation.

10. Bylaws. The Bylaws may be adopted or amended as provided for by the Bylaws of the Corporation.

11. Directorial Liability. The Incorporator, Directors, officers and employees of the Corporation shall not be personally liable for any debt or obligation solely by reason of being the incorporator, directors, officers and employees.

A director of the Corporation shall not be personally liable to the Corporation or its members for monetary damages for any act or omission constituting a breach of his or her duty as a director, unless such act or omission i) relates to a transaction in which the director has a personal financial interest which is in conflict with the financial interests of the Corporation or its members; ii) is not in good faith or involves intentional misconduct or is known to the director to be a violation of law; iii) is a vote for or assent to an unlawful distribution to members; or iv) relates to a transaction from which the director derives an improper personal benefit.

If KRS Chapter 273 is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by KRS Chapter 273, as so amended, and without the necessity for further member action in respect thereof.

Any repeal or modification of this paragraph 11 by the members of the Corporation shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such repeal or modification.

12. Incorporator. The name and address of sole incorporator is Jonathan L. Gay.

**IN WITNESS WHEREOF**, the incorporator has signed these Articles of Incorporation on August \_\_\_\_, 2013.

By: 

Jonathan L. Gay, Incorporator

**THIS INSTRUMENT PREPARED BY:**

**WALTHER, ROARK & GAY, PLC**

  
Jonathan L. Gay

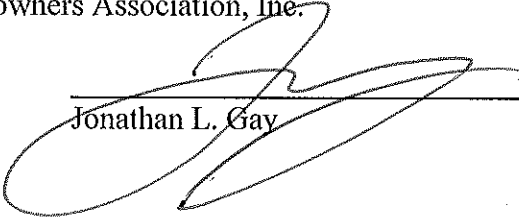
163 E. Main Street, Suite 200

Lexington, Kentucky 40507-1558

Telephone: 859-225-4714

**Consent of Initial Agent for Service of Process to Serve**

I, Jonathan L. Gay, having a principal place of business of 163 East Main Street, Suite 200, Lexington, Kentucky 40507, hereby agree and consent to serve as registered office and agent for service of process of the McFall Homeowners Association, Inc.

  
Jonathan L. Gay