

STATE OF NORTH CAROLINA
DEPARTMENT OF THE SECRETARY OF STATE

**ARTICLES OF INCORPORATION
OF
OAKCROFT CUD HOMEOWNERS ASSOCIATION, INC.**
(A North Carolina Nonprofit Corporation)

In compliance with the requirements of Chapter 55A of General Statutes of North Carolina, the undersigned, a resident of the State of North Carolina and of full age, has this day formed a corporation, not for profit, and does hereby certify the following:

ARTICLE I
NAME

The name of the corporation is **Oakcroft CUD Homeowners Association, Inc.** (hereinafter the "Association"). The Association is not a charitable or religious corporation as defined in Section 55A-1-40(4) of General Statutes of North Carolina.

ARTICLE II
PRINCIPAL OFFICE

The principal office of the Association is located at 8368 Six Forks Road, Suite 202, Raleigh, Wake County, North Carolina 27615. The location of the principal office may be changed by a majority vote of the Board of Directors.

ARTICLE III
REGISTERED OFFICE AND INITIAL REGISTERED AGENT

The registered office of the Association is located at 8368 Six Forks Road, Suite 202, Raleigh, Wake County, North Carolina 27615. The location of the registered office may be changed by a majority vote of the Board of Directors. The name of the initial registered agent at the above address is Thomas C. Hankins.

ARTICLE IV
PURPOSE AND POWER OF THE ASSOCIATION

The Association does not contemplate a pecuniary gain or profit to the Members thereof. Subject to the provisions of Chapter 47F (as amended and recodified from time to time, the "Planned Community Act") and Chapter 55A (as amended and recodified from time to time, the "Non-Profit Act") of the General Statutes of North Carolina, the specific purposes for which the Association is formed are:

1. to own and maintain the Common Areas within the subdivision known as Oakcroft Cluster Development Subdivision located in Raleigh, Wake County, North Carolina (the "Planned Community"), as such Planned Community is more particularly described in a Declaration of Covenants, Conditions and Restrictions for the Oakcroft CUD Homeowners Association, Inc. and for the Oakcroft Cluster Development Subdivision recorded, or to be recorded, in the Office of the Register of Deeds of Wake County, North Carolina (said Declaration and all valid amendments thereto from time to time are collectively referred to as the "Declaration");
2. to provide for architectural control within the Planned Community;
3. to provide for maintenance and preservation of the residential Lots and Common Areas, and to promote the health, safety and welfare of the residents within the Planned Community and any additions thereto as may hereafter be brought within the jurisdiction of the Association; and
4. to exercise all of the powers necessary or desirable to perform the obligations and duties set out in these Articles, the Declaration, the Association's By-Laws and otherwise conferred by law, including without limitation, the following:
 - (a) exercise all the powers and privileges and to perform all duties and obligations of the Association as set forth in the Declaration, as the same may be amended from time to time ;
 - (b) fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration;
 - (c) pay all expenses incurred in connection with collection of the charges and assessments set forth in subparagraph (b) above, and to pay all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied or imposed against property owned by the Association;
 - (d) 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 connection with the affairs of the Association; provided, however, that all conveyances and transfers of Common Areas must be done in accordance with all applicable laws, including but not limited to the ordinances of the City of Raleigh, North Carolina;
 - (e) borrow money and, with the assent of Members entitled to at least eighty percent (80%) of the votes of the entire membership of the Association but in any event not less than 67% of the votes of the membership excluding the

Act, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the property rights of the Members and the Association as provided in the Declaration;

- (f) dedicate, sell or transfer all or 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 upon by the Members. No such dedication or transfer shall be effective unless Members entitled to cast at least 80% of the votes of the entire membership, but in any event not less than 67% of the votes of the membership excluding the Declarant, have signed a written instrument consenting or agreeing to such dedication, sale or transfer and unless such other agreement or consent as then required by the Planned Community Act and the ordinances, regulations and procedures, including variances, of the City of Raleigh has been satisfied. Any such dedication or transfer shall be made subject to the rights and easements of the Association and the Owners established hereunder and under the Declaration, including but not limited to every Owner's easement for access, ingress and egress to such Owner's Lot;
- (g) participate in mergers and consolidations with the other non-profit corporations organized for the same or similar purposes in accordance with the Planned Community Act; and
- (h) have and exercise any and all powers, rights, and privileges which a not-for-profit corporation may now or hereinafter have or exercise.

The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other powers which may now or hereafter be permitted by the Non-Profit Act or the Planned Community Act, as the same may be amended from time to time.

ARTICLE V **MEMBERSHIP AND VOTING RIGHTS**

1. Every Person who is a record Owner of a fee interest in any Lot which is a part of the Properties, including Contract Sellers or Builders who own the Lot (and to not merely have it under contract), shall be a Member of the Association (herein referred to as a "Member" or collectively as "Members"). The foregoing is not intended to include Persons who hold an interest in a Lot merely as security, unless such Persons acquire title to a Lot through judicial or non-judicial foreclosure, deed in lieu of foreclosure, or other action.

Membership in the Association shall be appurtenant to and shall not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for Membership. When more than one (1) Person holds an interest in any Lot, all such Persons shall be Members, but the vote for such Members shall be exercised as a majority of such Persons shall determine, but in no event shall more than one (1) vote be cast with respect to any such Lot owned by Class A Member, and in no

event shall more than sixty-five (65) votes be cast with respect to any such Lot owned by the Class B Member. See Paragraph 3 of this Article V entitled "Voting Rights".

The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot in the Planned Community. Following termination of the Property as a planned community under the provisions of the Planned Community Act, all persons entitled to distributions of proceeds under the Planned Community Act shall be Members of the Association.

2. Classes. There shall be two (2) classes of voting Members:
 - (a) The Class A Members shall be all those owners other than the Declarant; and
 - (b) The Class B Member shall be the Declarant, its successors and/or assigns. Class B Membership may cease and be converted to Class A Membership at the option of the Class B Member, by its written notice to the Secretary of the Association. Class B Membership also shall cease and be converted to Class A Membership, without further act or deed, upon the date ten (10) years from the date upon which this Declaration shall be recorded in the Office of the Register of Deed of Wake County, North Carolina.

3. Voting Rights.
 - (a) Class A Members shall be entitled to one (1) vote for each Lot owned.
 - (b) Class B Members shall be entitled to sixty-five (65) votes for each Lot owned (whether or not it is under contract to a Contract Seller or Builder).
 - (c) No cumulative voting shall be permitted.
 - (d) Only those Members who are in good standing with the Association may vote.

No Owner, whether one or more Persons shall have more than one (1) membership for each Lot owned. In the event the Owner of a Lot is more than one Person, the votes associated with such Lot shall be cast as provided in the Planned Community Act.

ARTICLE VI **BOARD OF DIRECTORS**

1. The initial number of Directors of the Association shall be two (2) and shall be elected by the Declarant (Class B Member) for so long as either (a) the Declarant shall own any Lot which is subject by the provisions of this Declaration, or (b) the Declarant shall have the right to annex additional lands into the Association pursuant to the terms and provisions of the Declaration, as it may be amended; the Declarant shall have this selection power until whichever of these two events occurs last (hereinafter referred to as the "Turnover Date"). Thereafter the number of

Directors of the Association shall be increased to five (5), said five (5) Directors to be elected by the Members at a special meeting of the Members of the Association called by the Declarant not later than sixty (60) days after the termination of the Class B Membership (or such earlier date as required by law). At such special meeting of the Members of the Association the Members shall elect one (1) Director to serve a term of one (1) year, two (2) Directors to serve a term of two (2) years, and two (2) Directors to serve a term of three (3) years. The annual meeting of the Members of the Association shall be held each year thereafter on the anniversary of the aforescribed special meeting, unless such date shall fall on a legal holiday, and in such case, on the next business day immediately following such legal holiday.

2. At each annual meeting of the Association after the first annual meeting, the Members shall elect the number of Directors needed to fill the vacancy or vacancies created by the Director or Directors whose term(s) is/are expiring, to serve for a term of three (3) years (except in the case of the initial election of a Director, in which case the term of that Director may be shortened to provide for the staggering set forth in this Article, or in the case of the filling of a vacancy, in which case the Director elected to fill the vacancy shall be elected for the unexpired term of the Director whose vacancy is being filled). The term of office of the Directors shall be staggered so that, except for an election to fill a vacancy or to fill a newly created directorship, the terms of not less than one nor more than two Directors shall expire at each annual meeting of the Members of the Association. Each Director shall hold office until his/her death, resignation, retirement, removal or disqualification, or until his/her successor is elected and qualified, whichever event shall first occur.

3. After the Turnover Date as heretofore described in this Article, the number of Directors and their terms of office may be changed by amendment of the Association's By-Laws, provided that the number of Directors shall not be less than three (3) nor more than seven (7) and the number of Directors shall always be an odd number. Any directorships not filled by the Members shall be treated as vacancies to be filled by and in the discretion of the Board of Directors except as otherwise provided by the Planned Community Act or other applicable laws. A majority of the Directors elected by the Members, or such other number or percentage as then may be provided by the Planned Community Act, shall be Members of the Association or officers, directors, shareholders, trustees, partners, members or managers of Members which are entities.

4. So long as the Declarant is a Class B Member, all Directors of the Association shall be elected by the Class B Member. So long as the Declarant is not a Class B Member, all Directors of the Association shall be elected by the Class A Members.

ARTICLE VII FINANCE

The Association is a non-stock corporation and no part of the profits (if any) of the Association shall inure to the pecuniary benefit of its Members or to any other person except as provided in the Planned Community Act or the Non-Profit Act or otherwise as may be permitted by law.

ARTICLE VIII
DISSOLUTION

The Association may be dissolved only upon the signed written assent of Members entitled to at least eighty percent (80%) of the votes appurtenant to each class of membership. Upon dissolution of the Association, other than the incident to a merger of consolidation, the assets of the Association shall be sold, transferred and distributed in accordance with the Planned Community Act and the Non-Profit Act. Upon dissolution of the Association, other than incident to a merger or consolidation, and unless prohibited by applicable law, the Common Areas owned by the Association first shall be offered to the City of Raleigh or other appropriate public body or agency to be used for purposes similar to those for which the Common Areas are intended. If such offer is accepted, the Common Areas shall be deeded to the City of Raleigh or such other appropriate public body or agency. In the event that such dedication is refused acceptance, such Common Areas shall be deeded to any nonprofit corporation, nonprofit association, nonprofit trust or other nonprofit organization to be used for purposes similar to those for which the Common Areas are intended.

ARTICLE IX
DURATION

The period of existence of this Association is perpetual.

ARTICLE X
AMENDMENTS

Amendments of these Articles shall require the assent of the Members entitled to at least sixty-seven percent (67%) of the entire membership.

ARTICLE XI
INDEMNIFICATION

To the fullest extent permitted by the North Carolina Non-Profit Corporation Act and the North Carolina Planned Community Act, as such acts now exist or may hereafter be amended, no person who is serving or who has served as a director, officer, employee or committee member of the Association shall be personally liable for monetary damages for breach of any duty as a director, officer, employee or committee member of the Association. The Association shall indemnify its directors, officers, employees and committee members to the maximum extent required or permitted by applicable law, including but not limited to Part 5 of Article 8 of Chapter 55A of the North Carolina General Statutes, as amended from time to time, or by any similar statute by which it is amended, supplemented or repealed. Any person who serves in any such capacity of or on behalf of the Association shall be deemed to have done so in reliance upon and in consideration of such indemnification. Such indemnification shall inure to the benefit of such person and his or her heirs, successors, assigns and legal representatives, and it shall not be exclusive of any other rights to which such person may be entitled. Any repeal or modification of this shall be prospective only and shall not adversely affect any limitation hereunder with respect to acts or omissions occurring prior to such repeal or modification.

ARTICLE XII
DEFINITIONS

Except as clearly indicated to the contrary in these Articles, the definitions contained in the Declaration shall be applicable in these Articles.

ARTICLE XIII
CONFLICTS

In the case of any conflict between these Articles of Incorporation and the By-Laws of the Association, these Articles shall control; and in the case of any conflict between the Declaration and these Articles of Incorporation or the By-Laws of the Association, the Declaration shall control. These Articles of Incorporation are subject to the requirements of Chapter 47F and Chapter 55A of the North Carolina General Statutes, as amended, replaced and recodified from time to time. In the event these Articles of Incorporation conflict with the provisions of said statutes, it is hereby acknowledged and agreed that the provisions of such statutes will control.

ARTICLE XIV
INCORPORATOR

The name and address of the incorporator is as follows:

Roderick W. O'Donoghue, Jr.
1100 Navaho Drive, Suite 106
Raleigh, Wake County, North Carolina 27609

IN WITNESS WHEREOF, I, the undersigned incorporator have hereunto set my hand and seal this 30th day of July, 2004.

 (SEAL)
Roderick W. O'Donoghue, Jr., Incorporator