

**ARTICLES OF INCORPORATION  
OF THE  
HERITAGE PINES COMMUNITY ASSOCIATION, INC.**

In compliance with the requirements of Chapters 47F and 55A of the North Carolina General Statutes, the undersigned, a natural person of full age, has this day executed these Articles of Incorporation for the purpose of forming a non-profit corporation and hereby certifies as follows:

**ARTICLE I  
NAME**

The name of the corporation is **HERITAGE PINES COMMUNITY ASSOCIATION, INC.** (the "Association").

**ARTICLE II  
DEFINITIONS**

All terms defined in the Declaration Of Covenants, Conditions And Restrictions For The Heritage Pines Community Association, Inc., to be recorded in office of the Register of Deeds of Wake County, North Carolina (the "Declaration"), shall have the same meanings when used herein.

**ARTICLE III  
REGISTERED OFFICE AND INITIAL AGENT; PRINCIPAL OFFICE**

The registered office of the Association is located at 3500 Regency Parkway, Suite F, Cary, Wake County, North Carolina 27511. The name of the initial registered agent at such address is Robert T. Hutson.

The initial principal office of the Association is located at 3500 Regency Parkway, Suite F, Cary, Wake County, North Carolina.

The location of the registered and the principal office of the Association may be changed by a majority vote of the Board of Directors.

**ARTICLE IV  
PURPOSE AND POWERS OF THE ASSOCIATION**

Section 4.1. The Association is and shall be a not-for-profit corporation, and no part of the earnings of the Association shall inure to the benefit of any Member.

Section 4.2. The specific purposes for which the Association is formed are as follows:

- (a) To own, operate, manage and maintain the Common Area.
- (b) To provide for cutting and edging of lawns on Lots.
- (c) To establish, maintain, operate and provide all community services of every kind and nature required or desired by the Members, including, without limitation, those services and functions described in the Declaration.
- (d) To provide for the enforcement of covenants, rules and regulations set forth in the Declaration or adopted pursuant thereto.
- (e) To engage in such other activities as may be to the mutual benefit of the Members and Owners.
- (f) To do such other things as may be necessary or appropriate to carry out the foregoing purposes.

Section 4.3. In furtherance of the aforesaid purposes, the Association shall have and may exercise any and all powers, rights and privileges which a corporation organized under the Nonprofit Corporation Act of the State of North Carolina by law may now or hereafter have or exercise including, without limitation, the power to:

- (a) acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, and maintain, and, subject to the limitations set forth herein or in the Declaration or Bylaws, sell, convey, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property in connection with the affairs of the Association;
- (b) dedicate, sell or transfer all or any part of the Common Area to any public or quasi-public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the Members. After Class B Lots cease to exist (as provided in Article III of the Declaration), no such dedication or transfer shall be effective unless the Members entitled to at least 80% of the votes of the entire membership of the Association and at least 75% of the votes appurtenant to each Class of Lots agree to such dedication, sale or transfer and signify their agreement by a signed document recorded in the Wake County Registry. Nothing herein shall be deemed to prohibit the Board of Directors of the Association, without consent of the Members, from

granting easements over and across the Common Area to any public agency, authority or utility for the installation and maintenance of sewerage, utility (including cable television) or drainage facilities when, in the opinion of the Board, such easements are necessary for the convenient use and enjoyment of properties within the subdivision. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the owners of Lots within the Subdivision and shall not be conveyed except to the Town of Cary or another non-profit corporation organized for similar purposes;

(c) exchange all or part of the Common Area for other property and consideration of like value and utility, provided, however, that, after Class B Lots cease to exist, any such dedication shall require the assent of the Members as set forth in subparagraph (b) above;

(d) borrow money and mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of any such lender or mortgagee shall be subordinate to the property rights of the Members and the Association as provided in Article IV of the Declaration, provided, however, that, after Class B Lots cease to exist, any such dedication shall require the assent of the Members as set forth in subparagraph (b) above;

(e) fix, levy, collect and enforce payment by any lawful means, all charges or assessments made pursuant to the terms of the Declaration;

(f) pay all expenses incurred in connection with collection of the charges and assessments set forth in subparagraph (e) above, and pay all office and other expenses incident to the conduct of the business of the Association, including all taxes, licenses and other governmental charges levied or imposed against property owned by the Association;

(g) participate in mergers or consolidations with other non-profit corporations organized for the same or similar purposes, provided that any such merger or consolidation shall have the assent of the Members as provided in subparagraph (b) above;

(h) as provided in the Declaration, make and enforce rules and regulations applicable to the use of the Common Area and the Lots; and

(i) exercise all powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration and the Bylaws of the

## **ARTICLE V MEMBERSHIP AND VOTING RIGHTS**

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessment by the Association, including contract sellers, shall

be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association. The voting rights of the Members shall be provided in the Declaration and Bylaws of the Association.

#### ARTICLE IV 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 any of them, or to any other person.

#### ARTICLE VI INITIAL DIRECTORS

The affairs of the Association shall be managed by an initial Board of three (3) Directors. The persons who are to act in the capacity of Director until the selection of their successors are:

| <u>Name</u>     | <u>Address</u>                                |
|-----------------|---|
| William A. Bush | 800 W. Main Street, Freehold, NJ 07728        |
| Veronica Perez  | 3500 Regency Parkway, Suite F, Cary, NC 27511 |
| Sherry Smith    | 800 W. Main Street, Freehold, NJ 07728        |

So long as Class B Lots continue to exist, as provided in Section 2(b) of Article III of the Declaration, Declarant shall have the exclusive right to appoint and remove the Directors and officers of the Association. Thereafter, election of Directors shall be by the Members as provided in the Bylaws of the Association.

#### ARTICLE VII INDEMNIFICATION

Section 7.1. Indemnification. Any person who at any time is serving or has served as a director, officer, employee or agent of the Association, or who is serving or has served in any such capacity at the request of the Association in any other corporation, partnership, joint venture, trust or other enterprise or, at the request of the Association, as a trustee or administrator under any employee benefit plan, shall be indemnified by the Association to the fullest extent permitted by law,

including specifically the indemnification provided by the provisions of the North Carolina Nonprofit Corporation Act, including but not limited to indemnification against (i) reasonable expenses, including attorneys' fees actually and necessarily incurred by him in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether or not brought by or on behalf of the Association, seeking to hold him liable by reason of the fact that he is or was acting in such capacity, and (ii) reasonable payments made by him in satisfaction of any judgment, money decree, fine penalty or settlement for which he may become liable in any such action, suit or proceeding.

The Board of Directors of the Association shall take all such action as may be necessary and appropriate to authorize the Association to pay the indemnification required by the provisions of this Article, including without limitation, to the extent needed, making a good faith evaluation of the manner in which the claimant for indemnity acted and of the reasonable amount of indemnity due him and if required, giving notice to, and obtaining approval by, the Members of the Association.

Any person who at any time serves or has served in any of the aforesaid capacities for, on behalf of, or at the request of, the Association shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided under this subsection. Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provisions of the Bylaws of the Association.

If the North Carolina Nonprofit Corporation Act is subsequently amended to eliminate or further limit the personal liability of directors or to authorize corporate action to eliminate or further limit such liability, then the liability of the directors of this Association shall, without any further action of the Board of Directors or the Members of the Association, be eliminated or limited to the fullest extent permitted by the North Carolina Nonprofit Corporation Act as so amended.

Section 7.2. Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is serving or has served as a director, officer, employee or agent of the Association, or who is serving or has served in any such capacity at the request of the Association in any other corporation, partnership, joint venture, trust or other enterprise or, at the request of the Association, as a trustee or administrator under any employee benefit plan against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would otherwise have the power to indemnify him against such liability.

Section 7.3. Contracts. In addition to the indemnification authorized under the provisions of this Article VII and under the provision of the North Carolina Nonprofit Corporation Act, the Association, acting pursuant to a resolution adopted by its Board of Directors, may by contract agree to indemnify any person who at any time is serving or has served as a director, officer, employee or agent of the Association, or in any such capacity at the request of the Association in any other corporation, partnership, joint venture, trust or other enterprises or, at the request of the

Association, as a trustee or administrator under any employee benefit plan, against liability and reasonable litigation expenses, including attorneys' fees, arising out of his status as such or his activities in any of the foregoing capacities before or after the date on which the contract is executed; provided however, that the Association may not agree under any such contract to indemnify any such person against any liability or litigation expense he may incur in relation to matters as to which he shall have been adjudged in such action, suit or proceeding to have acted in bad faith or to have been liable or guilty by reason or willful misconduct in the performance of duty.

Section 7.4. Continuing Effect. Any repeal or modification of the provisions of this Article shall not affect any rights or obligations then existing with respect to any state of facts then or therefore or thereafter brought based in whole or in part on any such state of facts.

Section 7.5. Owner's Liability Excluded. This Article is intended to provide indemnification solely for actions taken by a person in his/her capacity as an officer or director of the Association. Nothing herein shall be deemed to provide indemnification to any person for any liability that may result from that person's ownership of property within the Properties.

#### ARTICLE VIII DURATION

The period of existence of the Association is perpetual.

#### ARTICLE IX DISSOLUTION

The Association may be dissolved only upon approval of a plan of dissolution by: (i) the Board of Directors; (ii) Members entitled to cast at least eighty percent (80%) of the votes of the Association; and, (iii) so long as Declarant owns any Lots within the Subdivision, by the Declarant. Upon dissolution, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created. In the event that such dedication is not accepted, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization devoted to similar purposes. Notwithstanding anything herein to the contrary, the Common Area shall be preserved to the perpetual benefit of the owners of Lots within the Subdivision and shall not be conveyed except to the Town of Cary or another non-profit corporation organized for similar purposes.

**ARTICLE X  
AMENDMENTS**

Subject to the provisions of Section 55A-10-02 of the North Carolina General Statutes, these Articles of Incorporation may be amended such amendment is approved by: (i) the Board of Directors; (ii) Members entitled to cast at least sixty-seven percent (67%) of the votes of the Association; and (iii) so long as Declarant owns any Lots within the Subdivision, by the Declarant, provided, however, that such amendment may not be in contravention of any provision of the North Carolina Nonprofit Corporation Act or the North Carolina Planned Community Act.

**ARTICLE XI  
INCORPORATOR**

The name and address of the incorporator is as follows:

|                  |   |
|------------------|---|
| Richard W. Moore | 3716 National Drive, Suite 100<br>Raleigh, North Carolina 27612 |
|------------------|---|

IN WITNESS WHEREOF, the undersigned incorporator has hereunto set his hand and seal, this the 21<sup>st</sup> day of October, 1999.

/s/ Richard W. Moore  
Richard W. Moore

-----  
STATE OF NORTH CAROLINA -- WAKE COUNTY:

I, Terri W. Robinson, a Notary Public for said County and State, do hereby certify that Richard W. Moore personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this the 21<sup>st</sup> day of October, 1999.

(Notary Seal)

/s/ Terri W. Robinson  
My commission expires: 12/09/01