

**ARTICLES OF INCORPORATION
OF THE
UPCHURCH FARMS HOMEOWNER'S ASSOCIATION, INC.**

In compliance with the requirements of Chapter 47F and Chapter 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 the **UPCHURCH FARMS HOMEOWNER'S ASSOCIATION, INC.** (hereinafter the "Association").

ARTICLE II

REGISTERED OFFICE AND INITIAL AGENT; PRINCIPAL OFFICE

The registered office and principal office of the Association is located at 1001 Navaho Drive, Suite 150, Raleigh, Wake County, North Carolina 27609. The name of the initial registered agent at such address is Greg Ferguson.

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

ARTICLE III

PURPOSE AND POWERS OF THE ASSOCIATION

The Association does not contemplate a pecuniary gain of profit to the members thereof. The specific purposes for which the Association is formed are; (i) to own and maintain the Common Area (as that term is defined in that certain Declaration of Covenants, Condition and Restrictions for **UPCHURCH FARMS SUBDIVISION** to be recorded in the Wake County Registry, as from time to time amended, said document, together with all amendments thereto, if any, being hereinafter referred to as the "Declaration") within the subdivision known as **UPCHURCH FARMS SUBDIVISION** (hereinafter "Upchurch Farms" or the "Subdivision"); (ii) to provide for maintenance and preservation of portions of the Lots (as defined in the Declaration) within Upchurch Farms and portion of the improvements constructed thereon; (iii) to provide for architectural control of improvements of the Lots and the Common Area; and (iv) to enforce rules, regulations and restrictions applicable to the Subdivision as set forth in the

Declaration or adopted pursuant thereto, and for these purposes:

- (a) to exercise all powers and privileges and perform all of the duties and obligations of the Association as set forth in the Declaration;
- (b) to fix, levy, collect and enforce payment by any lawful means, all changes or assessments made pursuant to the terms of the Declaration;
- (c) to pay all expenses incurred in connection with collection of the charges and assessments set forth in subparagraph (b) 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;
- (d) to acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain and, subject to the provisions of the Zoning Ordinance of the governing body having jurisdiction, and of subparagraph (f) below, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property in connection with the affairs of the Association;
- (e) to borrow money, and with the assent of Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots (Class A and Class B, as defined in Article III, Section 2 of the Declaration), mortgage, pledge, deed of 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 as provided in Article IV of the Declaration;
- (f) to 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 the Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots agree to such dedication, sale or transfer and signify their agreement by a signed and recorded document. 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 CATV) 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 the lots within Upchurch Farms and shall not be conveyed except to the

Town of Cary, or to another non-profit corporation organized for similar purposes;

- (g) to participate in mergers or consolidations with other non-profit corporations organized for the same or similar purposes, provided that no such merger or consolidation be effective unless approved by Members entitled to at least two-thirds (2/3) of the votes appurtenant to each Class of Lots, at a regular or special meeting called for the purpose of voting on such merger or consolidation;
- (h) to the extent permitted by the Town of Cary, exchange all or part of the Common Area for other property and consideration of like value and utility, which exchange may be approved by the Board of Directors without vote of the Members; and
- (i) to have and exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Act and the Planned Community Act of the State of North Carolina by law now has or may hereafter have or exercise.

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 V

MEMBERSHIP AND VOTING RIGHTS

Every person or entity who is 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 By-Laws of the Association.

ARTICLE VI

MANAGEMENT

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>
Greg Ferguson	1001 Navaho Drive, Suite 150 Raleigh, NC 27609
George Venters, Jr.	1001 Navaho Drive, Suite 150 Raleigh, NC 27609
Michael L. Jones	1001 Navaho Drive, Suite 150 Raleigh, NC 27609

The number of directors of the Association shall be three (3) until the first annual meeting of the Association, at which time the number of Directors shall be increased to five (5). At the first annual meeting, the Members shall elect one Director to serve a term of one year, two Directors to serve at term of two years, and two Directors to serve a term of three years.

At each annual meeting thereafter, 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 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 three, Directors shall expire at each annual meeting. Each Director shall hold office until his death, resignation, retirement, removal or disqualification, or until his/her successor is elected and qualified. Directors need not be Members of the Association.

The Members of the Association may, by a majority of the votes cast at any duly called annual or special meeting of the Members at which a quorum is present, increase or decrease the number of directors; however the number of directors shall not be increased to more than seven (7) nor decreased to less than three (3) without amendment of the By-Laws of the Association.

ARTICLE VII

DISSOLUTION

The Association may be dissolved only upon the signed written assent of the Members entitled to at least two-thirds (2/3) of the votes appurtenant to each class of Lots. 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 therein to the contrary, the Common Area shall be preserved to the perpetual benefit of the owners of Lots within Upchurch Farms and shall not be conveyed except to the Town of Cary or to another non-profit corporation organized for similar purposes.

ARTICLE VIII

DURATION

The period of existence of the Association is perpetual.

ARTICLE IX

AMENDMENTS

Amendment of these Articles shall require the assent of Members entitled to at least two-thirds (2/3) of the votes of the entire membership.

ARTICLE X

FHA/VA APPROVAL

As long as there is Class B membership, the following actions require the prior approval of the Federal Housing Administration or the Secretary of Veterans Affairs; annexation of additional property, mergers or consolidation, dissolution, mortgaging of Common Area, dedication or otherwise deeding of Common Area to persons other than the Association, and amendments of these Articles of Incorporation, except for an amendment to correct errors or omissions, or required by any "Institutional Mortgagee" (as such term is defined in the Declaration) so that such Institutional Mortgagee will make, insure or guarantee mortgage loans for the Lots, or is required by any governmental authority. Such approval shall be deemed given if FHA/VA fails to give written notice of its disapproval of any such action to Declarant, as same is defined in the Declaration, or the Association within twenty (20) days after a request for such approval is delivered to FHA/VA by certified mail, return receipt requested, or equivalent delivery, and such

approval may be conclusively evidenced by a certificate of Declarant or the Association that the approval was given or deemed given.

ARTICLE XI

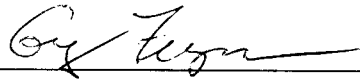
INCORPORATOR

The name and address of the incorporator is as follows:

Greg Ferguson

1001 Navaho Drive, Suite 150
Raleigh, Wake County, NC 27609

IN WITNESS WHEREOF, I, the undersigned incorporator, have hereunto set my hand and seal, this the 12 day of SEPT., 2001.

 (SEAL)
Greg Ferguson, Incorporator

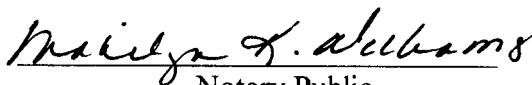
STATE OF NORTH CAROLINA
COUNTY OF WAKE

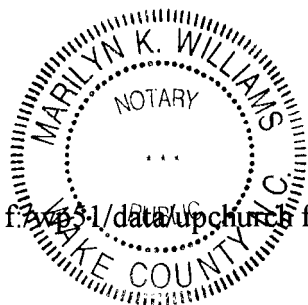
I, MARILYN K. WILLIAMS, a Notary Public of the County and State aforesaid, certify that Greg Ferguson personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 12 day of September, 2001.

My Commission expires:

1-26-04


Notary Public



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