

ARTICLES OF INCORPORATION
OF
HIGHCROFT COMMUNITY ASSOCIATION, INC.
(A NONPROFIT CORPORATION)

RECEIVED
JUN 26 2003
SECRETARY OF STATE

The undersigned, being a natural person of the age of eighteen years or more, hereby makes and acknowledges these Articles of Incorporation (the "Articles") for the purpose of forming a nonprofit corporation under the Nonprofit Corporation Act contained in Chapter 55A of the North Carolina General Statutes:

ARTICLE I

NAME

The name of the corporation is HIGHCROFT COMMUNITY ASSOCIATION, INC., hereinafter referred to as the "Association".

ARTICLE II

DURATION

The period of duration of the Association is perpetual.

ARTICLE III

PURPOSES AND POWERS

The purposes for which the Association is organized, and the powers conferred upon the Association, are specified in the following Sections of this Article.

Section 1. Organization. The Association specifically is organized as the "Association" pursuant to the provisions of that certain "Declaration For Highcroft P.U.D.", recorded in the Wake County, North Carolina Registry in Book 10152, Page 605 (and including all amendments and supplemental declarations thereto, the declaration and such amendments and supplemental declarations being referred to herein as the "Declaration"), the Declaration being incorporated by reference as if fully set out herein. The definitions of terms contained in the Declaration are applicable to the Articles, unless the context clearly indicates otherwise. As referred to herein and in the Declaration, the "Act" is the North Carolina Planned Community Act, currently contained in Chapter 47F of the North Carolina General Statutes, and the "Nonprofit Corporation Act" is the

North Carolina Nonprofit Corporation Act, currently contained in Chapter 55A of the North Carolina General Statutes. The Association shall have all of the rights, powers, duties and obligations conferred upon it by the Act, the Nonprofit Corporation Act, the Declaration and the Governing Documents, as construed in accordance with Article XII, Section 4 hereof, and the Association and its Members shall be subject to all of the terms of the Declaration, specifically including, without limitation, the provisions regarding membership in the Association and the obligation of Members of the Association to pay monetary assessments and other charges to the Association.

Section 2. Prohibited Powers. Except as specifically authorized by the Declaration or the Act, the Association does not have the powers described in the following subsections of Section 55A-3-02 (a) of the Nonprofit Corporation Act: subsections (5), (6), (7), (8), (9), (12), (13), (14), (15), (16) and (17).

Section 3. General Powers. Subject to any provisions of the Declaration or the Articles limiting or restricting the Association, in performing its functions under the Declaration, the Association may engage in any lawful activity for which nonprofit corporations may be organized under the Act and Nonprofit Corporation Act, and shall have all of the powers necessary to perform such functions.

ARTICLE IV

REGISTERED OFFICE AND AGENT

The street and mailing address and county of the initial registered office of the Association is:

133 Triangle Trade Drive
Cary, NC 27513

Wake County

The name of the initial registered agent of the Association at the foregoing address is Colen E. Davidson, Jr.

ARTICLE V

PRINCIPAL OFFICE

The principal office of the Association is located at 133 Triangle Trade Drive, Cary, Wake County, North Carolina 27513.

ARTICLE VI

MEMBERS

Section 1. Membership. Each and every Owner of a Parcel, including the Declarant, is a Member of the Association and, by execution of the Declaration or by acceptance of a deed conveying to such Owner title to any Parcel, each Owner consents to be a Member of the Association, subject to the terms of the Governing Documents. Membership shall be appurtenant to and may not be separated from ownership of the Parcel owned by such Owner. An Owner's membership in the Association automatically terminates whenever such Person ceases to be an Owner of a Parcel (except that the Declarant's Class B Membership shall terminate only as provided herein), but such termination shall not release or relieve any such Owner from any liability or obligation incurred under the Declaration during the period of such Owner's ownership, nor impair any rights or remedies which the Association or any other Owner has with respect to such former Owner.

Section 2. Classes of Voting Members. The Association shall have two (2) classes of voting Members as follows:

(a) **Class A.** Class A Members are the Owners of Development Parcels and Lots, excluding the Declarant during the Declarant Control Period. Class A Members are entitled to the following votes:

(1) A Class A Member is entitled to one (1) vote for each Lot owned by the Class A Member; provided, however, only one (1) vote may be cast for each Lot, regardless of the number of Owners thereof.

(2) A Class A Member is entitled to one (1) vote for each acre of a Development Parcel owned by such Class A Member. Provided, however, after a Development Parcel has been fully developed in accordance with the Subdivision Plan, site plan or other development plan therefor approved by the City, or there has been no development or marketing of a Development Parcel for a period of twenty-four (24) consecutive months, no votes as a Development Parcel will be allocated to any remaining undeveloped acreage in that Development Parcel. The determination of the time when such full development has occurred shall be in the reasonable discretion of the Declarant, during the Development Period, and thereafter, in the reasonable discretion of the Association. In determining the number of votes for a Development Parcel, a partial acre equal to 0.5 acre or more shall be rounded up to the nearest whole acre, and a partial acre less than 0.5 acre shall be rounded down to the nearest whole acre, except that where the acreage is less than one (1) acre, the Development Parcel shall be allocated one (1) vote. Only one (1) vote may be cast for each acre of a Development Parcel, regardless of the number of Owners thereof.

When more than one Person owns an interest (other than a leasehold or security interest) in any Lot or Development Parcel, all such Persons shall be Members and the voting rights appurtenant to their Parcel shall be exercised as they, among themselves, determine, but fractional voting shall not be allowed.

(2) **Class B.** The Class B Member is the Declarant. At the time of the recording of the Declaration, the Class B Member is entitled to 861 votes (the maximum number of Dwelling Units allowed in the Properties at the time of the recording of the Declaration under Legal Requirements is 287, and 287 multiplied by 3 is 861). During the Declarant Control Period (including any reinstatement thereof after it has terminated), the number of votes to which the Class B Member is entitled shall be determined by multiplying by three (3) the maximum number of Dwelling Units then allowed in the Properties under Legal Requirements and then subtracting from that total three (3) votes for each vote entitled to be cast by the Class A Members.

The Class B Membership shall terminate at the end of the Declarant Control Period, subject to reinstatement from time to time as provided in the definition of Declarant Control Period. Upon such termination, the Declarant shall become a Class A Member, shall have Class A votes with respect to the portions of the Properties owned by it, and all Unsubdivided Land shall be treated in the same manner as Development Parcels for purposes of assessments and voting under the Declaration.

Section 3. Apartment Units. At the time of the recording of the Declaration, Declarant does not anticipate that any portion of the Properties will be developed into Apartment Units. However, during the Development Period Declarant reserves the right, by recording a Supplemental Declaration, to create a sub-class of Class A Members for Apartment Units, which sub-class may be allocated one (1) or less vote in the Association for each Apartment Unit, as determined by Declarant in the Supplemental Declaration.

Section 4. Exercise of Voting Rights. The exercise of voting rights shall be governed by the Bylaws of the Association.

Section 5. Cumulative Voting. There shall be no cumulative voting.

ARTICLE VII

EXECUTIVE BOARD

The business of the Association shall be managed by an Executive Board (also referred to herein and in the Bylaws as the "Board of Directors" or the "Board"). The qualifications for serving as a director, number of directors, and the method of electing or appointing directors, shall be as provided in the Bylaws.

ARTICLE VIII

EARNINGS; COMPENSATION

No part of the earnings of the Association shall inure to the benefit of any director, officer, Architectural Review Committee member, other Board committee member, employee or agent of the Association (other than as a Member of the Association in the same manner as all other Members are benefitted), except that, unless prohibited or limited by the Act, the Nonprofit Corporation Act or Governing Documents: (i) reasonable compensation may be paid for services rendered to or for the Association by its employees and agents; (ii) payments and indemnifications may be made to and on behalf of directors, officers, Architectural Review Committee members, other Board committee members, employees and agents of the Association as allowed in one or more of the Act, the Nonprofit Corporation Act, or other Governing Documents; and (iii) any officer, director, Architectural Review Committee member, other Board committee member, employee or agent of the Association who also is an Owner as defined in the Declaration, shall have all of the rights, powers, privileges and obligations of an Owner.

ARTICLE IX

EXCULPATION, IMMUNITY AND INDEMNIFICATION

Section 1. Exculpation of Directors. To the fullest extent permitted by the Nonprofit Corporation Act as it currently or hereafter exists, no person who is serving or who has served as a director of the corporation shall be liable personally for monetary damages for breach of any duty as a director. No amendment or repeal of this Section, nor the adoption of any amendment to the Articles inconsistent with this Section, shall eliminate or reduce the protection granted herein with respect to any act or matter that occurred prior to such amendment, repeal, or adoption.

Section 2. Immunity. To the fullest extent permitted by the Nonprofit Corporation Act as it currently or hereafter exists, each director and officer of the Association shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for

any act or failure to act arising out of such director or officer's service as a director or officer of the Association. No amendment or repeal of this Section, nor the adoption of any amendment to the Articles inconsistent with this Section, shall eliminate or reduce the protection granted herein with respect to any act or matter that occurred prior to such amendment, repeal, or adoption.

Section 3. Indemnification. To the fullest extent permitted by the Nonprofit Corporation Act as it currently or hereafter exists, the Association shall indemnify each Association director, officer, Architectural Review Committee member and other Board committee member (each of whom is referred to hereinafter as an "Indemnitee") as follows:

(a) The Association shall indemnify and hold harmless each Indemnitee in the event the Indemnitee is made, or threatened to be made, a party to any pending, threatened, or completed civil, criminal, administrative, investigative, or arbitrative action, suit, or proceeding, including any appeal therein and any inquiry or investigation that could lead to such action, suit or proceeding, by reason of the fact that such Indemnitee is or was a director, officer or Architectural Review Committee member or other Board committee member.

(b) The indemnification shall include all liabilities and expenses, including without limitation all attorney's fees and expenses, judgments, fines, excise taxes, and amounts paid in settlement, and all expenses incurred by the Indemnitee in enforcing the Indemnitee's rights hereunder.

(c) The Association shall pay, in advance of the final disposition of such action, suit or proceeding, each Indemnitee's reasonable expenses, including attorney's fees, incurred in defending any such action, suit, or proceeding.

(d) The foregoing rights of an Indemnitee shall inure to the benefit of the Indemnitee with respect to matters indemnified, whether or not the Indemnitee is a director, officer, Architectural Review Committee member or other Board committee member at the time such liabilities or expenses are imposed or incurred, and in the event of the Indemnitee's death shall extend to the Indemnitee's heirs and legal representative.

(e) The rights of each Indemnitee hereunder are in addition to and not exclusive of any other rights to which the Indemnitee may be entitled under any Legal Requirement, agreement, insurance policy, or otherwise.

(f) To the extent reasonably possible, prior to expending any funds of the Association for an indemnity, the Association first shall obtain and apply all available insurance proceeds toward such indemnity.

(g) No amendment or repeal of this Section, nor the adoption of any amendment to the Articles inconsistent with this Section, shall eliminate or reduce the protection granted herein with respect to any act or matter that occurred prior to such amendment, repeal, or adoption.

Section 4. Limitations. The foregoing provisions for exculpation, immunity and indemnification are for directors, officers, Architectural Review Committee members and other Association committee members acting in their capacities as such, and with respect to any such Persons who also are Owners of any part of The Properties, such provisions are not intended to and shall not exculpate, provide immunity or indemnify any of such Persons from their liabilities as Owners under the Declaration and other Governing Documents.

ARTICLE X

AMENDMENT

Section 1. Amendment by Declarant. During the Declarant Control Period Declarant may, without the approval or joinder of the Association, or any Member of the Association, Institutional Lender or Secondary Mortgage Market Agency, amend any provision of the Articles from time to time to: (i) make non-material, clarifying or corrective changes not materially, adversely affecting any Owner's rights or obligations hereunder; or (ii) satisfy the requirements of FHA (Federal Housing Administration), VA (Veterans Administration), Fannie Mae (Federal National Mortgage Administration), Office of Interstate Land Sales Registration of the Department of Housing and Urban Development (OILSR) or other governmental agency Secondary Mortgage Market Agency or Institutional Lender; or (iii) establish or maintain the tax exempt status of the Association under the laws of the United States or the State of North Carolina. Any such amendment shall be effective upon the later of the date of its filing in compliance with Legal Requirements or the effective date specified therein. Provided, however, during the Declarant Control Period any such amendment of the Articles also shall require approval by the United States Department of Housing and Urban Development ("HUD") or its designee and/or by the United States Veterans Administration ("VA") or its designee if, at the time of such termination or dissolution, applicable HUD or VA regulations require such approval.

Section 2. Amendment by the Members. Unless amended as allowed under Section 1 or required under Section 3 of this Article, the Articles may be amended only as follows:

(a) Unless a higher percentage or different voting requirement is specified herein or by Legal Requirements, the Articles may be amended only by (i) the written agreement or consent of those Class A Members who have, or the affirmative vote at a duly called meeting of the Association of those Class A Members who have, sixty-seven percent (67%) or more of the total number of votes allocated to the Class A Members, and (ii) during the Declarant Control Period, with the written consent of Declarant.

(b) Written notice of an annual or special meeting of the Association at which any proposed amendment to the Articles is to be voted on, together with at least a summary description of the proposed amendment, shall be given to all Members not less than ten (10) days nor more than sixty (60) days in advance of the date of such meeting. If the meeting for which notice has been given is adjourned, notice of the subsequent meeting shall be given as required by the Bylaws.

(c) In addition to the foregoing requirements, during the Declarant Control Period any such amendment to the Articles also shall require approval by the United States Department of Housing and Urban Development ("HUD") or its designee and/or by the United States Veterans Administration ("VA") or its designee if, at the time of such termination or dissolution, applicable HUD or VA regulations require such approval.

Section 3. Amendment of Declaration. Upon amendment of the Declaration, the Articles shall be deemed amended as necessary to conform to the amended Declaration, and the directors and officers of the Association shall file such documents with the office of the North Carolina Secretary of State as may be reasonably required to conform the Articles to the amended Declaration.

ARTICLE XI

TERMINATION OF ASSOCIATION; DISTRIBUTION OF ASSETS UPON DISSOLUTION

Section 1. Duration. Unless sooner terminated as required by Legal Requirements, the Declaration shall run with and bind the Properties and each Owner, and shall inure to the benefit of the Association, and each other Owner of any portion of the Properties, and their respective heirs, successors, and assigns, from and after the recording of the Declaration in the Registry until such time as it is terminated by a written termination agreement, executed or ratified in the same manner as a deed, as follows: (i) during the Declarant Control Period, executed or ratified by Declarant and by those Members to whom eighty percent (80%) or more of the Class A votes in the Association are allocated; and (ii) following the end of the Declarant Control Period, executed or ratified by those Members to whom eighty percent (80%) or more of the total votes in the Association are allocated. Execution or ratification by any one of multiple Owners of a Parcel is sufficient for that Parcel unless, prior to the time the termination agreement is recorded in the Registry, any other Owner of that Parcel files with the Association a written objection to the termination of the Declaration (in which event the vote allocated to that Parcel shall be considered as not having been exercised). The termination agreement shall specify a date after which it will be void unless it is recorded in the Registry before that date. The termination agreement may not be recorded in the Registry unless and until the requisite number of signatures have been obtained as provided herein, and it shall be effective only upon recording. If, pursuant to the termination agreement, any real estate in the

Properties is to be sold following termination of the Declaration, the minimum terms of the sale shall be set forth therein.

Section 2. Dissolution of the Association. The Association shall be dissolved upon the termination of the Declaration. Provided, however, until any sale of the Common Property authorized by the termination agreement or approved by the Owners in the same manner as required for approval of the termination agreement is completed and the sale proceeds distributed, the Association shall continue in existence with all of the powers it had before termination. The Association, on behalf of the Owners, may contract for the sale of the Common Property, but the contract is not binding unless such sale has been authorized in the termination agreement or it has been approved by the Owners in the same manner as required for approval of the termination agreement. Proceeds of the sale of Common Property shall be distributed to the Owners and lienholders as their interests may appear, as provided in the termination agreement or other agreement approved by the Owners in the same manner as required for approval of the termination agreement. If the Common Property is not to be sold following termination of the Declaration, title to the Common Property vests in the Owners upon termination, as tenants in common in proportion to their respective interests as provided in the termination agreement.

Upon dissolution of the Association or upon loss of ownership of all of the Common Property by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the Common Property as allowed by the Declaration, or by reason of merger and/or consolidation with any other association as allowed by the Declaration), except as otherwise provided in the termination agreement, other agreement approved by the Owners in the same manner as required for approval of the termination agreement, or Legal Requirements (in particular, section 47F-2-118 of the Act, or any successor section of the Act), any portion of the Common Property not under the jurisdiction of and being maintained by another association substantially similar to the Association, together with all other assets of the Association, first shall be offered to the Town of Cary, North Carolina (or, if the Town of Cary refuses such offer, then to some other appropriate governmental entity or public agency as determined by the Board) to be dedicated for public use for purposes similar to those to which the Common Property and such assets were required to be devoted by the Association. If the Town of Cary or such other appropriate governmental entity or public agency accepts the offer of dedication, such portion of the Common Property and assets shall be conveyed by the Association to the Town of Cary or such other appropriate governmental entity or public agency, subject to the superior right of an Owner to an easement (if necessary) for reasonable ingress and egress to and from such Owner's Parcel and the public or private street(s) on which that Parcel is located, subject to all other applicable rights of way and easements, and subject to ad valorem property taxes subsequent to the date of such conveyance.

If the Town of Cary or such other appropriate governmental entity or public agency refuses the offer of dedication and conveyance, the Association may transfer and convey such Common Property and assets to any nonprofit corporation, association, trust or other entity which is or shall be devoted to purposes and uses that would most nearly conform to the purposes and uses to which

the Common Property was required to be devoted by the Declaration, such transfer and conveyance to be made subject to the rights of Owners and the other matters set forth in the immediately preceding paragraph of this Section. If there is no nonprofit corporation, association, trust or other entity who will accept such transfer and conveyance of the Common Property and assets of the Association, then such Common Property and assets shall be distributed as provided in the plan of termination/dissolution adopted by the Association.

Section 3. Termination or Dissolution During Declarant Control Period.

In addition to the foregoing requirements, during the Declarant Control Period any termination of the Declaration or dissolution of the Association also shall require approval by the United States Department of Housing and Urban Development ("HUD") or its designee and/or by the United States Veterans Administration ("VA") or its designee if, at the time of such termination or dissolution, applicable HUD or VA regulations require such approval.

ARTICLE XII

MISCELLANEOUS

Section 1. Titles. The titles, headings and captions which have been used throughout the Articles are for convenience only and are not to be used in construing the Articles or any part hereof, except as necessary with respect to any cross-referencing of any provisions of the Articles.

Section 2. Number and Gender. Whenever the context of the Articles requires, the singular shall include the plural and one gender shall include all.

Section 3. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of the Articles shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses and phrases hereof shall continue in full force and effect and shall not be affected thereby. To the extent that any provision of the Articles is determined to be overly broad or unenforceable and a narrower or partially enforceable construction may be given to such provision without destroying its intent, then the narrower or partially enforceable provision shall be applied and, to the extent lawful, shall be enforced. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 4. Conflicts. Whenever there exists a conflict among the Governing Documents of the Association (which include the Declaration, Supplemental Declarations, the Articles and the Bylaws), the provisions of the Declaration and thereafter, any applicable Supplemental Declaration

shall control, except as to matters of compliance with the Nonprofit Corporation Act, in which event the Articles shall control. Whenever there is a conflict between the provisions of the Articles and the Bylaws, the provisions of the Articles shall control. With respect to the foregoing, specific provisions shall control general provisions, except that a construction consistent with the Act and Nonprofit Corporation Act shall in all cases control over any construction inconsistent therewith. The provisions of the Bylaws shall control over any conflicting provision of any rule, regulation or other resolution adopted by the Association. The Governing Documents shall be construed together and consistent with the Act and Nonprofit Corporation Act, and shall be deemed to incorporate one another in full.

ARTICLE XIII

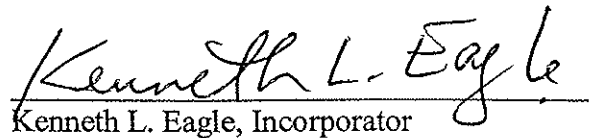
INCORPORATOR

The name and address of the incorporator is as follows:

Kenneth L. Eagle
14600 Weston Parkway, Suite 300
Cary, North Carolina 27513

Wake County

This, the 23rd day of June, 2003.


Kenneth L. Eagle, Incorporator