

ARTICLES OF INCORPORATION  
OF  
THE HIGHLANDS COMMUNITY ASSOCIATION, INC.

We, the undersigned, hereby associate to form a non-stock corporation under the provisions of Chapter 10 of Title 13.1 of the Code of Virginia, as amended, and to that end adopt the following Articles of Incorporation for such Corporation:

ARTICLE I

The name of the Corporation is THE HIGHLANDS COMMUNITY ASSOCIATION, INC.

ARTICLE II

The purposes and powers of the Corporation are as follows:

(a) To manage, maintain, and care for the Common Properties in the planned community development known as The Highlands, located in Chesterfield County, Virginia, and to assess, collect and disburse the charges due the Corporation from its members, as hereinafter provided.

(b) To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, sell, lease, transfer, mortgage, encumber, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the corporation, but only in accordance with the purposes of the Corporation.

(c) To do any and all things and acts that the Corporation, from time to time, in its discretion, may to be for the benefit of the Properties and the owners inhabitants thereof or advisable, proper or convenient the promotion of the peace, health, comfort, safety or general welfare of the owners and inhabitants thereof; and further, the Corporation shall have the powers, rights and privileges to conduct any and all business that a Corporation organized under the Virginia Non-Stock Corporation Act by law may now or hereafter have or exercise and that is not required to be specifically set forth in these Articles; provided, however, that notwithstanding any other provisions of these Articles, the Corporation shall not carryon any activities not permitted to be carried on by a homeowners association exempt from federal income tax under Section 528 of the Internal Revenue Code of 1954 or the corresponding provision of any future Internal Revenue law.

(d) The Corporation is not organized for profit, nor shall it have any power to issue certificates of stock or ay dividends, and no part of the net earnings or assets of the Corporation shall inure to the benefit of or be distributed, upon dissolution or otherwise, to any member of the Corporation, Director Officers of other private person. The Corporation may enter into contracts with the Proprietors or with any other person (including any Member, Officer, or Director), and may pay compensation in reasonable amounts for services rendered.

ARTICLE III

Provisions relating to the members of the Corporation are:

(a) The members of the Corporation shall be every Owner and Residential Tenant as defined in the Covenants.

(b) There shall be the following two (2) classes of membership in the Corporation:

(1) Type "A" Members shall be all Owners, including the Proprietors, their successors and assigns, of Residential Lots, and/or Tenants occupying Family Dwelling Units. A Type "A" Member shall be entitled to two (2) votes except that if a Family Dwelling Unit is occupied by a Tenant as is principal residence, the Owner shall be entitled to one (1) vote and the Tenant shall be entitled to one (1) vote.

(2) Type "B" Members shall be the Proprietors. The Type "B" Member shall be entitled to cast votes for the election of Members of the Board of Directors as set out in Article IV herein.

When any property entitling the Owner to membership as a Type "A" or 'B' Member of the Association is owned of record in the name of two (2) or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, or if two (2) or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the Secretary of the Association, their acts with respect to voting shall have the following effect:

(1) If only one (1) votes, in person or by proxy, his act shall bind all;

(2) If more than one (1) vote, in person or by proxy, the act of the majority so voting shall bind all;

(3) If more than one (1) vote, in person or by proxy, but the vote is evenly split on any particular matter, each fraction shall be entitled to its proportionate share of the vote or votes;

(4) If the instrument or order filed with the Secretary of the Association shows that any such Tenancy is held in unequal interest, a majority or even split under sub-paragraphs (2) and (3) immediately above shall be a majority or even split in interest in the property to which the vote(s) is attributable;

(5) The principles of this paragraph shall apply, insofar as possible, to execution of proxies, waivers, consents or objections and for the purpose of ascertaining the presence of a quorum.

The voting rights of any Owner may be assigned by said Owner to his lessee; provided, however, that the Owner may not assign to such lessee any vote or votes not attributable to the property actually leased by such lessee.

(c) The members of the corporation shall have the right to vote for the election and

removal of directors and upon such other matters with respect to which a vote of members is required under the Covenants, these Articles of Incorporation or under the provisions of Chapter 2 of Title 13.1 of the Code of Virginia, as amended.

#### ARTICLE IV

The affairs of the Corporation shall be managed by a Board of Directors, who shall hold office until the election of their successor or successors. Initially, the Board shall consist of three (3) members, with the number in subsequent years to be determined by the Board of Directors as provided for in the By-Laws of the Corporation. The Directors shall be elected by the members of the Corporation or the Proprietors according to the following formula:

(i) Each Member of Type "A" and "B" Membership class shall be entitled to as many votes as equals the number of votes he is entitled to, based on his Ownership of or Tenancy in a residential lot or dwelling unit as computed by the formula set out hereinabove in Article III hereof, multiplied by the number of Directors to be elected by Type "A" Members. Members may cast all of such votes for any one (1) director or may distribute them among the number to be elected by Type "A" Members, or any two (2) or more of them, as he may see fit, provided, however, that all votes must be cast in whole numbers and not fractions thereof. This right, when exercised, is termed cumulative voting. Members, except the Type "B" Membership, are divided into classes for the sole purpose of computing voting rights and shall not vote as a class.

(ii) The Type "A" Members shall elect the Class I Director(s), and Type "B" members shall elect the Class II Director(s) according to the following formula:

(a) The number of Class I Directors shall be determined by (a) dividing the number of Residential Lots owned by Type "A" members by 1500, and (b) then multiplying the resulting quotient by the total number of Directors and (c) rounding the result to the nearest whole number, e.g.,  $1.51 = 2$ ; e.g.,  $1.49 = 1$ . In any event, there shall be at least one (1) Class A Director from the total number of Directors.

(iii) For the purposes of this formula, the number of Residential Lots owned by Type "A" members shall be determined by the Board of Directors as of the date on which notice of the meeting of the members at which the Board of Directors is to be elected is mailed.

#### ARTICLE V

The names and addresses of those persons who are to constitute the initial Board of Directors until the election of their successors are:

NAME

ADDRESS

George P. Emerson, Jr\_

200 River's Bend Circle  
Chester, VA 23831

Oliver D. Rudy

12672 Winfree Street  
Chester, VA 23831

Gurpal S. Bhuller

14713 Green Forest Drive  
Colonial Heights, VA 23834

ARTICLE VI

The post office address of the initial registered office of the Corporation is Post Office Box 58, Chesterfield, Virginia 23832. The name of the initial registered agent is Oliver D. Rudy, who is a member of the Virginia State Bar and a resident of Virginia, whose business address is Rudy, Evans & Mikula, Cogbill Law Building, Courthouse Square, Chesterfield, Virginia 23832, in the County of Chesterfield.

ARTICLE VII

The Corporation shall have perpetual existence.

ARTICLE VIII

To the extent provided by law, the Corporation may participate in mergers and consolidation with other non-profit associations organized for the same purpose, provided, however, that any such mergers or consolidation shall require approval by the *vote* of more than two-thirds (2/3) of the Type "A" membership at a meeting duly called for such purpose.

ARTICLE IX

Upon dissolution of the Corporation, the assets, both real and personal, shall be transferred in the manner set forth the covenants for the transfer of the Common Properties in event the Covenants are declared void, invalid, illegal or otherwise unenforceable. In the event of such a dissolution and transfer, the assets shall continue to be used and maintained for the purposes set out herein.

ARTICLE X

The names and addresses of those persons who are to act as incorporators are:

NAME

ADDRESS

Oliver D. Rudy

12672 Winfree Street  
Chester, Virginia 23831

George P. Emerson, Jr.

200 River's Bend Circle  
Chester, Virginia 23831

## ARTICLE XI

(1) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (including an action or suit by or in the right of the Corporation to procure a judgment in its favor) by reason of the fact that he is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation-as a director or officer of another corporation, partnership, joint venture, trust or other enterprises, against judgments, fines, amounts paid in settlement, and expenses (including attorneys' fees) actually and reasonable incurred by him in connection with such action, suit or proceeding if he acted in good faith and in the manner he reasonable believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in the manner he reasonable believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(2) Notwithstanding the provisions of section (1) of this Article, no indemnification shall be made in any action or suit by or in the right of the Corporation to procure a judgment in its favor with respect to any claim, issue or matter as to which such person shall have been finally adjudged to be liable to gross negligence or willful misconduct in the performance of his duty to the Corporation unless, and only to the extent that, the court in which such-action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonable entitled to indemnification.

(3) To the extent that any such person has been successful on the merits or otherwise in defense of any Action, suit or proceeding referred to in section (1) of this Article, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonable incurred by him in connection therewith.

(4) any indemnification under sections (1) and (2) of this Article (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of any such person is proper in the circumstances because he had met the applicable standard of conduct set forth in such sections (1) and (2). Such determination shall be made either (i) by the Board of a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding; or (ii) if such a quorum is not obtainable, or even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or (iii) by the Members. If the determination is to be made by the Board, it may rely as to all questions of law, on the advice of independent counsel.

(5) Expenses (including attorneys' fees) incurred in defending an action, suit or

proceeding, whether civil, criminal, administrative, arbitratve or investigative, may e paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized in the manner provided in section (4) of this Article, upon receipt of an undertaking by or on behalf of such person to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation as authorized in this Article.

(6) The Board is hereby empowered, by a majority vote of a quorum of disinterested directors, to cause the Corporation to indemnify or contract in advance to indemnify any person not to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitratve or investigative, by reason of the fact that such person is or was an employee or agent of the Corporation, or is or was serving at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise, to the same extent as if such person were specified as one to whom indemnification is granted in section (1). The provisions of sections (2) through (5) of this Article shall be applicable to any indemnification provided hereafter pursuant to this section (6).

(7) The Corporation may purchase and maintain insurance to indemnify it against the whole or any portion of the liability assumed by it in accordance with this Article and, may also procure insurance, in such amounts as the Board may determine, on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, 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 Corporation would have the power to indemnify him against such liability under the provisions of this Article.

(8) Every reference herein to director, officer, employee or agent shall include former directors, officers, employees, and agents and their respective heirs, executors and administrators. The indemnification hereby provided and provided hereafter pursuant to the power hereby conferred on the Board shall not be exclusive of any other rights to which any person may be entitled, including any right under policies of insurance that may be purchased and maintained by the Corporation or others, with respect to claims, issues or matters in relation to which the Corporation would not have the power to indemnify such person under the provisions of this Article.

## ARTICLE XII

The following words and terms when used in these Articles of Incorporation (unless the context shall clearly indicate otherwise) shall have the following meanings:

(a) "Association" shall mean and refer to The Highlands Community Association, Inc., a Virginia non-profit corporation, its successors and assigns.

(b) "The Highlands" when used herein shall refer to the lands in Chesterfield County, Virginia, which are shown as a part of the Proprietors' Master Development Plan as revised from time to time, which plan has been filed with and approved by the Chesterfield County Planning Commission and is in the office of the Chesterfield Community Development Department.

(c) "Proprietor" shall refer to Nash Road/Woodpecker Road and Oliver D. Rudy, Trustee under the provisions of a trust agreement dated March 20, 1988, designated as NASH ROAD/WOODPECKER ROAD TRUST AGREEMENT, his successors and assigns.

(d) The "Properties" shall mean and refer to the real property described in the following paragraph (1), together with such additions as the Proprietors may from time to time make.

(1) SEE EXHIBIT "A" ATTACHED

(e) "Residential Lot" shall mean any subdivided parcel of land located within the Properties for which no building permit has been issued by the appropriate governmental authorities and which parcel is intended for use as a site for a Single Family Detached Dwelling as shown upon any recorded final subdivision map of any part of the Properties. No parcel shall, however, be classified as a Residential Lot until the first day of the quarter of the year following the recording of a plat in the Clerk's Office of the Circuit Court of Chesterfield County, Virginia, showing such Residential Lot.

(f) "Unsubdivided Land" shall mean and refer to all land in the Existing Property described in (d) (1) above and additions thereto, which has not been subdivided into residential lots. The following classifications of Property shall not be deemed "Unsubdivided Land" and shall be expressly excepted from the definition thereof:

(1) All lands committed to the Association through express, written notification by the Proprietors to the Association of intent to convey to the Association;

(2) All lands designated on the Master Plan for intended use, or by actual use if applicable, for outdoor recreation facilities; operating farms and/or animal pastures; woodland marsh and swamp conservancies.

(3) All lands designated, in any way, as Common Properties.

(g) "Family Dwelling Unit" shall mean and refer to any improved property or any property for which a building permit has been issued by the appropriate governmental authorities, which property is intended for use as a Single Family Dwelling.

(h) "Owner" shall mean and refer to the Owner as shown by the Real Estate Records in the Clerk's Office of the Circuit Court of Chesterfield County, Virginia, whether it be one (1) or more persons, firms, associations, corporations, or other legal entities, of fee simple title to any Residential Lot situated upon the Properties but, notwithstanding any applicable theory of a deed of trust, shall not mean or refer to the mortgagee or (holder of a deed of trust, its successors or assigns, unless and until such mortgagee or holder of a deed of trust has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. In the event that there is recorded in the Office of the Clerk of the Circuit Court of Chesterfield County, Virginia, a long-term contract of sale covering any Lot or Parcel of land within the Properties, the Owner of such Lot or Parcel of land shall be the Purchaser under said contract and not the fee simple title holder. A long-term contract of sale shall be one where the Purchaser is required to make payments for the Property for a period extending beyond nine (9) months from the date of the contract, and where the purchaser does

not receive title to the Property until such payments are made, although the Purchaser is given the use of said Property.

(i) "Tenant" shall mean and refer to the lessee under a written agreement for the rent and hire of a Dwelling Unit.

(j) "Resident" shall mean and refer to each Owner and Tenant of a Dwelling Unit who resides in The Highlands.

(k) "Member" shall mean and refer to all those Owners and Tenants who are Members of the Association as defined in Section (a) of Article III.

(l) "Master Plan" shall mean and refer to the drawing which represents the conceptual plan for the future development of The Highlands. Since the concept of the future development of The Highlands is subject to continuing revision and change by the Proprietors, present and future references to the "Master Plan" shall be references to the latest revision thereof. Said plan is on file in the Chesterfield County Department of Community Development.

(m) "Common Properties" shall mean and refer to those tracts of land with any improvements thereon which are deeded to the Association and designated in said deed as "Common Properties." The term "Common Properties" shall also include any personal property acquired by the Association if said property is designated a "Common Property." All Common Properties are to be devoted to and intended for the Common use and enjoyment of the Proprietors, Residents, and their guests, and visiting members of the general public (to the extent permitted by the Board of Directors of the Association) subject to the fee schedules and operating rules adopted by the Association.

(n) "Referendum" shall mean and refer to the power of all or some specific portion of the Members to vote by mailed ballots on certain actions by the Board of Directors of the Association more particularly set forth herein including, without limitation: the levy of any Special Assessment; the levy of any Capital assessment; the increase of the maximum regular annual assessment in excess of that provided for herein; and the addition and deletion of functions or services which the Association is authorized to perform. In the event fifty-one (51%) per cent of the votes actually returned to the Association within the specified time shall be in favor of such action, the Referendum shall be deemed to "pass" and the action voted upon will be deemed to have been authorized by the Members, provided, however, that if a higher percentage required to "pass" shall be specifically expressed herein, that higher percentage shall control in that instance.

WITNESS our hands and seals this 8<sup>th</sup> day of April 1992

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(Oliver D. Rudy)  
OLIVER D. RUDY, Incorporator

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(George P. Emerson, Jr.)  
GEORGE P. EMERSON, JR., Incorporator