

MAIL TO: SMITH MOORE LLP, PO Box 21927, Greensboro, NC 27420 (JWS)



NORTH CAROLINA

Department of The Secretary of State

To all whom these presents shall come, Greetings:

new Smith Moore LLP POB 21927 Greensboro NC 27420

I, ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ENVELOPE

ARTICLES OF INCORPORATION

OF

HOLMES CREEK CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.

the original of which was filed in this office on the 14th day of September, 2005.

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FORSYTH CO, NC FEE \$39.00
PRESENTED & RECORDED:
10-20-2005 03:31 PM
DICKIE C WOOD
REGISTER OF DEEDS
By: BETTY C CAMPBELL DPTY
BK:RE 2610
PG:3372-3381



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 14th day of September, 2005

Elaine F. Marshall

Secretary of State

SOSID: 802431
Date Filed: 9/14/2005 10:31:00 AM
Elaine F. Marshall
North Carolina Secretary of State
C200525200057

ARTICLES OF INCORPORATION

OF

HOLMES CREEK CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.

In compliance with the requirements of 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 nonprofit corporation and hereby certifies:

ARTICLE I

The name of the corporation is Holmes Creek Condominium Homeowners Association, Inc., hereinafter sometimes called the "Association."

ARTICLE II

The principal and registered office of the Association is located at 1810 Pembroke Road, Guilford County, Greensboro, North Carolina, 27408.

ARTICLE III

B. John Kavanagh, whose address is 1810 Pembroke Road, Guilford County, Greensboro, North Carolina, 27408, is hereby appointed the initial Registered Agent of this Association.

ARTICLE IV

This Association does not contemplate pecuniary gain or profit to the members thereof and no part of the Association's net income shall inure to the benefit of any of its officers, Executive Board members or Members or any other private individual. The purposes and objects of the Association shall be to administer the operation and management of Holmes Creek Condominium (hereinafter called "the Condominium"), a condominium to be established in accordance with the laws of the State of North Carolina upon the property situate, lying and being in Winston-Salem Township, Winston-Salem, Forsyth County, North Carolina, and shown on **Schedule "A"** attached hereto and incorporated herein by reference or so much thereof as may be brought within the jurisdiction of this Association and any additional property which may hereafter be brought within the jurisdiction of this Association; to undertake the performance of the acts and duties incident to the administration of the operation and management of said Condominium in accordance with the terms, provisions, conditions and authorizations contained in these Articles of Incorporation and which may be contained in the formal Declaration of Condominium (the "Declaration") which will be recorded in the Public Records of Forsyth County, North Carolina, at the time said property, and the improvements now or hereafter situate thereon, are submitted to a plan of Condominium ownership; and to own, operate, lease, sell, trade and otherwise deal with such property, whether real or personal, as may be necessary or convenient in the administration of said Condominium.

ARTICLE V

The Association shall have the following powers:

1. The Association shall have all of the powers and privileges granted to Non-Profit Corporations under the law pursuant to which this corporation is chartered, and all of the powers and privileges which may be granted unto said corporation under any other applicable laws of the State of North Carolina, including the North Carolina Condominium Act.

2. The Association shall have all of the powers reasonably necessary to implement and effectuate the purposes of the Association, including but not limited to the following:

(a) To make and establish reasonable rules and regulations governing the use of Units and Common Elements in the Condominium as said terms may be defined in said Declaration to be recorded.

(b) To levy and collect assessments against Members of the Association to defray the common expenses of the Condominium as may be provided in said Declaration and in the Bylaws of the Association which may be hereafter adopted, including the right to levy and collect assessments for the purposes of acquiring, operating, leasing, managing and otherwise trading and dealing with such property, whether real or personal, including Units in the Condominium, which may be necessary or convenient in the operation and management of the Condominium and in accomplishing the purposes set forth in said Declaration.

(c) To maintain, repair, replace, operate and manage the Condominium and the property comprising same, including the right to reconstruct improvements after casualty and to make further improvement of the Condominium property, and to make and enter into any and all contracts necessary or desirable to accomplish said purposes.

(d) To contract for the management of the Condominium and to delegate to such contractor all of the powers and duties of the Association except those which may be required by the Declaration to have approval of the Executive Board or Membership of the Association.

(e) To acquire and enter into, now or at any time hereafter, leases and agreements whereby the Association acquires leaseholds, memberships and other possessory or use interests in lands or facilities, whether or not contiguous to the lands of the Condominium, to provide enjoyment, recreation or other use or benefit to the owners of Units.

(f) To enforce the provisions of the Declaration, these Articles of Incorporation, the Bylaws of the Association which may be hereafter adopted, and the rules and regulations governing the use of the Condominium as the same may be hereafter established.

(g) To exercise, undertake and accomplish all of the rights, duties and obligations which may be granted to or imposed upon the Association pursuant to the Declaration aforementioned.

(h) To grant easements, leases, licenses and concessions through, over or with respect to the Common Elements for public utilities or other public purposes consistent with the intended use of the Common Elements by the Condominium and reasonably necessary to the ongoing development and operation of the Condominium, without a vote or the consent of the Unit Owners, upon and subject to such terms and conditions as the Association's Executive Board in its sole discretion deems appropriate; provided, however, no such grant shall unreasonably interfere with or obstruct the Owners' right of ingress to and egress from the Units.

(i) To collect assessments levied against Members of the Association and their Units by Holmes Creek Master Homeowners Association, Inc. and to serve as the attorney-in-fact for Holmes Creek Master Homeowners Association, Inc. for the purpose of enforcing the collection of such assessments and any lien securing the same, all within the discretion of the Executive Board of the Association.

ARTICLE VI

The qualification of the Members, the manner of their admission to Membership and termination of such Membership, and voting by Members shall be as follows:

3. All Unit Owners shall be Members of the Association, and no other person or entity shall be entitled to Membership.

4. Membership shall be established by the acquisition of fee title to a Unit, or by acquisition of a fee ownership interest therein, whether by conveyance, devise, judicial decree or otherwise, and the Membership of any party shall be automatically terminated upon his being divested of all title to or his entire fee ownership interest in any Unit, except that nothing herein contained shall be construed as terminating the Membership of any party who may own two or more Units, or who may own a fee ownership interest in two or more Units, so long as such party shall retain title to or a fee ownership interest in any Unit.

5. The interest of a Member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner, except as an appurtenance to his Unit. The funds and assets of the Association shall belong solely to the Association subject to the limitation that the same be expended, held or used for the benefit of the Membership and for the purposes authorized herein, in the Declaration and in the Bylaws which may be hereafter adopted.

6. On all matters which the Membership shall be entitled to vote, each Unit shall have a vote equal to its appurtenant undivided interest in the Common Elements as set forth in Exhibit "B" of the Declaration, as amended from time to time. The vote of each Unit may be cast or exercised by the Owner or Owners of each Unit in such manner as may be provided in the Bylaws hereafter adopted by the Association.

ARTICLE VII

The Association shall have perpetual existence.

ARTICLE VIII

The affairs of the Association shall be managed by the President of the Association, assisted by the Vice President, Secretary and Treasurer and, if any, the Assistant Secretaries and Assistant Treasurers, subject to the directions of the Executive Board. The Executive Board, or the President with the approval of the Executive Board, may employ a managing agent and/or such other managerial and supervisory personnel or entities to administer or assist in the administration of the operation and management of the Condominium, and the affairs of the Association, and any such person or entity may be so employed without regard to whether such person or entity is a Member of the Association, an Executive Board member or Officer of the Association, as the case may be.

ARTICLE IX

The number of members of the first Executive Board of the Association shall be three (3). The number of members of succeeding Executive Boards shall be as provided from time to time by the Bylaws of the Association. The members of the Executive Board shall be elected by the Members of the Association at the Annual Meeting of the Association as provided by the Bylaws of the Association, and at least a majority of the Executive Board shall be Members of the Association or shall be authorized representatives, officers, directors, shareholders, members, partners or employees of a corporate, company or partnership Member of the Association.

Notwithstanding anything herein to the contrary, except as otherwise set forth in paragraphs A. and B. below, for a period ending one hundred twenty (120) days after conveyance of seventy-five percent (75%) of the units (including units which may be created pursuant to Special Declarant Rights; i.e., seventy-five percent (75%) of one hundred eighty (180) units to Unit Owners other than John Kavanagh Company, a North Carolina corporation, its successors or assigns ("Declarant") or any other declarant, but in any event no longer than two (2) years after Declarant or any other declarant has ceased to offer Units for sale in the ordinary course of business, two (2) years after the last exercise of any Development Rights set out in Article V of the Declaration, or seven (7) years from the date the Declaration is recorded, whichever occurs first, Declarant shall have the right to designate and select all of the persons who shall serve as members of each Executive Board of the Association.

A. Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the units (including units which may be created pursuant to Special Declarant Rights; i.e., twenty-five percent (25%) of one hundred eighty (180) units) to Unit Owners other than a declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Unit Owners other than the Declarant.

B. Not later than sixty (60) days after conveyance of fifty percent (50%) of the units (including units which may be created pursuant to

Special Declarant Rights; i.e., fifty percent (50%) of one hundred eighty (180) units) to Unit Owners other than a declarant, not less than thirty-three percent (33%) of the members of the Executive Board shall be elected by Unit Owners other than the Declarant.

Declarant may designate and select the person or persons to serve as a member or members of each said Executive Board in the manner provided in the Bylaws of the Association, and, notwithstanding anything herein contained to the contrary, such person or persons so designated and selected need not be a Unit Owner or a resident of the Condominium.

So long as Declarant retains the right to appoint a majority of the members of the Executive Board of the Association as set forth in Article XXXII of the Declaration and provided loans insured by the Department of Veterans Affairs encumber one or more Units within the Condominium, the prior approval of the Department of Veterans Affairs must be obtained before taking any of the following actions: amendment of these Articles of Incorporation or of the Declaration (excluding amendments by Declarant to exercise any of the Development Rights reserved under Article V of the Declaration); annexation of properties not described in the Declaration; dedication of any Common Elements; merger or consolidation of the Association or of the Condominium; encumbrance of any of the Common Elements; and dissolution of the Association.

ARTICLE X

The Executive Board shall elect a President, Vice-President, Secretary and Treasurer, and as many Assistant Secretaries and Assistant Treasurers as the Executive Board shall determine. The President shall be elected from among the membership of the Executive Board, but no other officer need be an Executive Board member. The same person may hold two offices, the duties of which are not incompatible; provided, however, that the office of President and Vice-President shall not be held by the same person, nor shall the office of President and Secretary or Assistant Secretary be held by the same person.

ARTICLE XI

The names and addresses of the initial Executive Board who, subject to the provisions of these Articles of Incorporation, the Bylaws, and the laws of the State of North Carolina, shall hold office until the first Annual Meeting of the Membership (or until their successors are elected and qualified) are as follows:

<u>Names</u>	<u>Addresses</u>
Aaron Stokes	1810 Pembroke Road Greensboro, NC 27408
B. John Kavanagh	1810 Pembroke Road Greensboro, NC 27408
Paula McCoy	1810 Pembroke Road Greensboro, NC 27408

ARTICLE XII

The original Bylaws of the Association shall be adopted by a majority vote of the members of the Executive Board, and thereafter, such Bylaws may be altered or rescinded only in such manner as said Bylaws may provide.

ARTICLE XIII

Every Executive Board member and every Officer of the Association shall be indemnified by the Association against all expenses and liabilities, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been an Executive Board member or Officer of the Association, whether or not he is an Executive Board member or Officer at the time such expenses are incurred, except in such cases wherein the Executive Board member or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that, in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the Executive Board member or Officer seeking such reimbursement or indemnification, the indemnification herein shall only apply if the Executive Board approves such settlement and reimbursement as being in the best interests of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Executive Board member or Officer may be entitled.

ARTICLE XIV

An amendment or amendments to these Articles of Incorporation shall require the assent of the Members entitled to cast seventy-five percent (75%) of the votes of the Membership.

Material amendments to these Articles of Incorporation must be approved by Institutional Lenders (as defined in Article XXXI of the Declaration) as set forth in Paragraph (D), Article XXIX of the Declaration.

No amendment to these Articles of Incorporation which shall abridge, amend or alter the right of Declarant to designate and select members of each Executive Board of the Association, as provided in Article IX hereof, or otherwise alter, amend or modify the rights and privileges granted and reserved in the Declaration, the Bylaws, or hereunder in favor of the Declarant, may be adopted or become effective without the prior written consent of Declarant.

No amendment relating to the maintenance or ownership of any permanent detention or retention pond shall be effective unless reviewed and approved by the governmental office having jurisdiction for watershed protection.

ARTICLE XV

The Association may be dissolved with the consent given in writing and signed by the Members entitled to cast not less than three-fourths (3/4) of the votes of the Membership and with the written consent of the holders of at least two-thirds (2/3rds) of all first mortgage or deed of trust liens affecting the Units (based on one (1) vote for each first mortgage or deed of trust lien held); provided, however, so long as a declarant retains the right to designate and select a

majority of the persons who shall serve as members of each Executive Board of the Association, any dissolution of the Association shall require the consent and joinder of such declarant(s). Upon dissolution of the Association, 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 this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

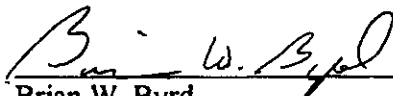
ARTICLE XVI

Every person who is or shall be or shall have been a member of the Executive Board or officer of the Association and his or her personal representative shall be indemnified by the Association against all costs and expenses reasonably incurred by or imposed on him or her in connection with or resulting from any action, suit or proceeding to which he or she may be made a party by reason of his or her being or having been a member of the Executive Board or officer of the Association or any subsidiary or affiliate thereof, except in relation to such matters as to which he or she shall finally be adjudicated in such action, suit or proceeding to have acted in bad faith or to have been liable by reason of willful misconduct in the performance of his or her duty as such member of the Executive Board or officer. For purposes of this provision, "costs and expenses" shall include, without limiting the generality thereof, attorneys' fees, damages and reasonable amounts paid in settlement. Nothing contained in these Articles shall be deemed to eliminate or reduce the protection from personal liability granted to members of the Executive Board by the North Carolina Nonprofit Corporation Act and by the Articles of Incorporation of the Association.

ARTICLE XVII

The name and address of the incorporator are as follows: Brian W. Byrd, 300 N. Greene Street, Greensboro, North Carolina, 27401.

IN WITNESS WHEREOF, I, the undersigned incorporator, have hereunto set my hand and seal, this 7th day of Sept., 2005.

 (SEAL)
 Brian W. Byrd
 Incorporator

NORTH CAROLINA
RANDOLPH COUNTY

This is to certify that on this 7th day of Sept., 2005, before me, Janet S. Wicker, a Notary Public of said County and State, personally appeared BRIAN W. BYRD, who I am satisfied is the person named in and who executed the foregoing Articles of Incorporation of Holmes Creek Condominium Homeowners Association, Inc., and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, this 7th day of Sept., 2005.

Janet S. Wicker
Notary Public

My Commission Expires:

9-15-2009

[Notary Seal/Stamp]

JANET S. WICKER
NOTARY PUBLIC
RANDOLPH COUNTY, NC

SCHEDULE "A"

BEGINNING at a NIP, said NIP being located in the southeastern intersection of Hwy. 150 and Bridgeton Road and said NIP being located South $73^{\circ} 16' 28''$ West 101.32 feet from P.K. Nail @ C/L Intersection, thence with Hwy. 150 South $06^{\circ} 08' 37''$ West 926.56 feet to a NIP; thence leaving Hwy. 150 South $82^{\circ} 11' 15''$ West 319.74 feet to an axle; thence South $07^{\circ} 06' 12''$ West 119.26 feet to a rebar; thence North $86^{\circ} 44' 35''$ West 435.70 feet to a NIP located in the southeastern corner of property now or formerly owned by H.C. Harris as recorded in Deed Book 631 at Page 465; thence with Harris' eastern line the following two (2) bearing breaks: North $05^{\circ} 07' 32''$ West 100.64 feet to a NIP and North $26^{\circ} 54' 39''$ West 530.52 feet to an EIP in Harris' northeastern corner and the southeastern corner of property now or formerly owned by Timothy G. Teague as recorded in Deed Book 2207 at Page 819; thence with Teague's eastern line North $05^{\circ} 36' 46''$ West 290.95 feet to a NIP; thence North $76^{\circ} 28' 55''$ East 108.93 feet to a manhole located in the southwestern corner of Lot 94 of Laurel Park, Phase 1, Plat Book 31 at Page 94; thence with the southern line of Laurel Park, Phase 1, along the southern line of Lot 94 through 105 the following four (4) bearing breaks: North $64^{\circ} 40' 09''$ East 264.81 feet to an EIP, North $75^{\circ} 13' 06''$ East 140.00 feet to an EIP, South $89^{\circ} 38' 22''$ East 139.95 feet to an EIP, and South $69^{\circ} 18' 09''$ East 326.53 feet to an EIP located in the southeastern corner of Lot 105; thence with the eastern line of Lot 105 North $11^{\circ} 31' 46''$ East 155.00 feet to a NIP located in the southern margin of the right-of-way of Bridgeton Road; thence with the southern margin of the right-of-way of Bridgeton Road the following two (2) bearing breaks: along a curve to the left having a radius of 635.672 and a chord bearing and distance of South $83^{\circ} 28' 24''$ East 110.87 feet to a NIP and South $88^{\circ} 28' 35''$ East 76.11 feet to a NIP located in the southwestern intersection of Hwy. 150 and Bridgeton Road, the point and place of BEGINNING, containing 21.513 acres according to a Boundary Survey for Kavanagh Associates for George W. Holmes Property prepared by Evans Engineering, Inc., denoted as PROJ:[605-399BDYP], dated the 27th day of May 2004, revised June 1, 2004.