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Birmingham, Alabama 35205

Inst # 1999-04401

02/02/1999-04401  
08:11 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
008 CRH 50.00

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**ARTICLES OF INCORPORATION  
—OF—  
BENT RIVER COMMONS OWNERS ASSOCIATION, INC.**

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The undersigned, for the purpose of forming a corporation pursuant to the provisions of the Alabama Nonprofit Corporation Act (Code of Alabama (1975), Sections 10-3A-1, et seq.) hereby adopts the following Articles of Incorporation and certifies as follows:

1. **NAME.** The name of the corporation is the "Bent River Commons Owners Association, Inc." (hereinafter referred to as the "Association").

2. **DURATION.** The period of duration of the Association shall be perpetual.

3. **PURPOSES.** The purposes for which the Association is organized are:

(a) To provide for the efficient preservation of the appearance, value and amenities of Bent River Commons (the "Development") which is subject to the Bent River Commons General Covenants, Restrictions and Easements (the "General Covenants") recorded as Instrument #1996-06492 in the Probate Office of Shelby County, Alabama. Capitalized terms not otherwise defined herein shall have the same meanings given to them in the General Covenants.

(b) To own, operate, maintain, manage, repair and replace Common Areas of the Development.

(c) To the extent provided in the General Covenants, to control the specifications, architecture, design, appearance, siting and landscaping of all improvements to be constructed, placed or permitted to remain on any lot in the Development and all alterations, changes and additions thereto.

(d) To perform and carry out the acts, duties, responsibilities and conditions delegated to the Association in the General Covenants, these Articles of Incorporation, the Bylaws of this Association and all amendments thereto.

(e) To own, lease, license, operate, purchase, acquire, hold, improve, develop, manage, sell, convey, transfer, exchange, release and dispose of, either alone or in conjunction with others, real and personal property, tangible and intangible, of every kind, character and description.

(f) To enforce all of the terms and provisions of the General Covenants and to make, establish and enforce reasonable rules and regulations governing the administration, operation and management of the Development.

(g) To make, levy, collect and enforce assessments and to use and expend such assessments in the manner set forth in the General Covenants.

(h) To employ personnel and contract for services, material and labor, including contracting for the management of the common areas and all other portions of the Development.

(i) To purchase and maintain insurance for such coverages, with such insurance carriers, in such amounts, at such rates and with such deductibles as may be necessary for the protection of the Association, its officers, directors and members or as may be otherwise required in the General Covenants.

(j) To enforce any of the provisions of the General Covenants by legal and equitable actions as may from time to time be necessary.

(k) To enter into, make and perform contracts of every kind for any lawful purpose without limit as to amount, with any person, firm, association, partnership, limited partnership, corporation, municipality, county, state, territory, government, governmental subdivision, or body politic.

(l) To operate without profit for the sole and exclusive benefit of its members.

(m) To carry on any other business in connection with the foregoing, to transact any or all lawful business for which corporations may be incorporated under the Alabama Nonprofit Corporation Act, as amended, and to have and exercise all powers necessary or convenient to effect the purpose of the Association in accordance with and subject to the terms and provisions of the General Covenants.

**THIS ASSOCIATION DOES NOT CONTEMPLATE PECUNIARY GAIN OR PROFIT FOR THE MEMBERS THEREOF AND THE FUNDS OF THE ASSOCIATION, WHETHER RECEIVED BY GIFT OR OTHERWISE, REGARDLESS OF THE SOURCE THEREOF, SHALL BE EXCLUSIVELY USED IN THE PROMOTION OF THE BUSINESS OF THE ASSOCIATION, AS THE BOARD OF DIRECTORS MAY FROM TIME TO TIME DETERMINE.**

4. **INITIAL REGISTERED OFFICE AND AGENT.** The location and mailing address of the initial registered office of the Association, and the name of its initial registered agent at such address are as follows:

Mr. Robert D. Moore  
4040 Bent River Lane  
Birmingham, Alabama 35216

5. **NONSTOCK AND NONPROFIT STATUS.** The Association shall have no capital stock, is not organized for profit, and does not contemplate pecuniary gain or profit to the members thereof. No part of the earnings of the Association shall inure to the benefit of any member, individual, officer, or director. The Association does not contemplate the distribution of gains, profits or dividends to the members thereof and is organized solely for nonprofit purposes.

6. **MEMBERS.** The members of the Association shall consist of all owners of lots within the Development. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a lot. Developer, as defined in the General Covenants, shall be entitled to all voting rights attributable to any lots owned by Developer. The voting rights of any member who has violated the General Covenants or who is in default in the payment of assessments to the Association may be limited and suspended in accordance with the provisions of the General Covenants or any rules and regulations adopted by the Association.

7. **DIRECTORS.**

(a) **Number of Directors.** The affairs of the Association shall be managed by a Board of Directors. The number of directors (the "Directors") constituting the initial Board of Directors shall be three (3). Thereafter, the number of Directors shall be fixed in the manner provided in the Bylaws and may thereafter be increased or decreased from time to time by amendment to or in the manner provided in the Bylaws; provided, however, that (i) the number of Directors shall in no event consist of less than three (3) Directors nor more than seven (7), and (ii) no decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director. Directors need not be owners or residents of the State of Alabama. The names and addresses of each person who is to serve as an initial Director of the Association until their successors are elected and qualified or until such Directors are removed as provided in Paragraph 7(b) of these Articles are as follows:

✓ Robert D. Moore  
4040 Bent River Lane  
Birmingham, Alabama 35216

Deborah S. O'Hara  
4045 Bent River Lane  
Birmingham, Alabama 35216

Anita A. Bray  
4016 Bent River Lane  
Birmingham, Alabama 35216

(b) **Removal.** The members of the Association shall have the right at any time and from time to time to remove any Director, either with or without cause, and may appoint a successor to such removed Director. Any vacancies which may thereafter arise on the Board shall be filled as provided in the Bylaws.

(c) **Powers.** Except as may be otherwise provided to the contrary in the General Covenants, these Articles of Incorporation or the Bylaws of the Association, all powers of the Association shall be exercised by or under authority of, and the business and affairs of the Association shall be managed under the direction of, the Board of Directors.

8. **INCORPORATOR.** The name and address of the incorporator is as follows:

Mr. Robert D. Moore  
4040 Bent River Lane  
Birmingham, Alabama 35216

9. **DISTRIBUTION OF ASSETS UPON DISSOLUTION.**

(a) Upon dissolution of the Association, all of its assets remaining after provision for creditors and payment of all costs and expenses of such dissolution shall be distributed in the following manner:

(i) Real property contributed to the Association without the receipt of other than nominal consideration by Developer shall be returned to Developer, unless it refuses to accept the conveyance (in whole or in part); and

(ii) Unless otherwise agreed to the contrary in the plan of distribution, all remaining assets shall be distributed among the members of the Association, as tenants in common, with each member's share of the assets to be determined in accordance with its voting rights.

(b) Dissolution of the Association shall be accomplished as set forth in the Alabama Nonprofit Corporation Act.

10. **POWER OF PRESIDENT AND VICE PRESIDENTS TO EXECUTE DOCUMENTS.** The President and each Vice President of the Association shall each have authority to execute all instruments, documents and contracts on behalf of the Association.

11. **INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES, MEMBERS, MANAGERS AND AGENTS.**

(a) The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including appeals (other than an action by or in the right of the Association), by reason of the fact that he is or was a director, officer, employee, member manager or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee, member, manager or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such claim, action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association; and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

(b) The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, member, manager or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee, member, manager or agent of another corporation, partnership, limited liability company, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association; provided, however, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for willful, deliberate or wanton misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite that adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(c) To the extent that a director, officer, employee, member, manager or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraphs 11(a) and (b) above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith,

notwithstanding that he has not been successful on any other claim, issue or matter in any such action, suit or proceeding.

(d) Any indemnification under Paragraphs 11(a) and (b) above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, member, manager or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Paragraphs 11(a) or (b) above. Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to, or who have been wholly successful on the merits or otherwise with respect to, such claim, action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by a majority vote of the members of the Association.

(e) Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding may be paid by the Association in advance of the final disposition of such claim, action, suit or proceeding as authorized in the manner provided in Paragraph 11(d) above upon receipt of an undertaking by or on behalf of the director, officer, employee, member, manager or agent to repay such amount if and to the extent that it shall be ultimately determined that he is not entitled to be indemnified by the Association as authorized in this Paragraph 11.

(f) The indemnification authorized by this Paragraph 11 shall not be deemed exclusive of and shall be in addition to any other right to which those indemnified may be entitled under any statute, rule of law, provisions of these Articles of Incorporation, Bylaws, agreement, vote of members or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, member, manager or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) The Association shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, member, manager or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee, member, manager or agent of another corporation, partnership, limited liability company, 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 Association would have the power to indemnify him against such liability under the provisions of this Paragraph 11.

12. **AMENDMENT.** These Articles of Incorporation may be amended by the affirmative vote of at least two-thirds (2/3) of the total votes in the Association (i.e., two-thirds (2/3) of all owners).

13. **INCORPORATION BY REFERENCE.** All of the terms, provisions, definitions, covenants and conditions set forth in the General Covenants are hereby expressly incorporated herein by reference as if fully set forth herein. In the event of any conflict or ambiguity between the terms, provisions, definitions, covenants and conditions set forth herein in these Articles of Incorporation and the General Covenants, then the provisions of the General Covenants shall at all times control.

**IN WITNESS WHEREOF**, the undersigned Incorporator has hereunto subscribed his name to these Articles of Incorporation as of this the \_\_\_ day of February 2, 1999.

Robert D. Moore  
Mr. Robert D. Moore  
Incorporator

# State of Alabama

SHELBY

## County

CERTIFICATE OF INCORPORATION

OF

BENT RIVER COMMONS OWNERS ASSOCIATION, INC.

The undersigned, as Judge of Probate of SHELBY County, State of Alabama, hereby certifies that duplicate originals of Articles of INCORPORATION of BENT RIVER COMONS OWNERS ASSOCIATION, INC., duly signed and verified pursuant to the provisions of Section NON PROFIT of the Alabama Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY the undersigned, as such Judge of Probate, and by virtue of the authority vested in him by law, hereby issues this Certificate of INCORPORATION of BENT RIVER COMMONS OWNERS ASSOCIATION, INC., and attaches hereto a duplicate original of the Articles of INCORPORATION.

GIVEN Under My Hand and Official Seal on this the 2ND day of FEBRUARY, 19 99.

*Patricia L. Geyer Schumacher*  
Judge of Probate

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SHELBY COUNTY JUDGE OF PROBATE

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