

WHISPERING CREEK HOMEOWNERS ASSOCIATION, INC.

ARTICLES OF INCORPORATION 7th 10:30 PM 1:17

THIS IS TO CERTIFY:

FIRST: The undersigned, Nancy Haas, whose post office address is Suite 800, 250 West Pratt Street, Baltimore, Maryland 21201, being at least eighteen years of age, is hereby forming a non-stock, not-for-profit corporation under and by virtue of the general laws of the State of Maryland.

SECOND: The name of the corporation (hereinafter called the "Corporation") is

WHISPERING CREEK HOMEOWNERS ASSOCIATION, INC.

THIRD: The purpose for which the Corporation is formed are as follows:

To organize and operate a real estate management corporation to provide for the acquisition, construction, management, maintenance, care and preservation of the open spaces, common areas and facilities within those certain tracts of property described in paragraph (a) of this Article Third, and to promote the recreation, health, safety and welfare of the residents within said property, and any addition thereto as may hereafter be brought within the jurisdiction of this Corporation, no part of the net earnings of which is to inure to the benefit of, or be distributable to, any director, officer, or member of the Corporation, or any other individual, so that no pecuniary gain or profit to the members thereof is contemplated, and for such general purposes, and limited to those purposes, the Corporation shall have the following powers:

(a) To acquire, own, hold, preserve, develop, improve, build upon, manage, operate and maintain open space tracts or areas and common or recreational areas, property, facilities and real estate, whether fee simple or leasehold, and whether improved or unimproved, all designed for the common use, benefit, enjoyment, recreation, health, safety and welfare of the record owner or owners of each lot now or hereafter laid out or established within a portion of the Property located within the subdivision known as "Whispering Creek," in the New Market (9th) Election District of Frederick County, Maryland, as more particularly described in Exhibit A to that certain Declaration of Covenants, Conditions, Restrictions and Easements (the "Declaration") made by HD Whispering Creek, L.L.C. (the "Declarant"), and recorded or intended to be recorded among the Land Records of Frederick County, Maryland, as same may hereafter from time to time be amended or extended to any additional properties, such Declaration made a part hereof by reference thereto as fully, and to the same extent as though incorporated herein. The lots, common areas and other real property described in the Declaration are collectively referred to in these Articles as the "Property."

(b) To exercise all the powers, rights and privileges and to perform all the duties and obligations of the Corporation, as same are set forth in the Declaration.

(c) To establish, fix, make, impose, levy, collect and enforce payment of, by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Corporation, including all licenses, taxes or governmental charges levied or imposed against the property of the Corporation.

(d) To purchase, lease, option, or otherwise acquire, own, hold, preserve, develop, improve, build upon, manage, operate, maintain, convey, sell, exchange, rent, lease, dedicate for public use, or in any manner transfer or dispose of any real or personal property in connection with the affairs of the Corporation; provided, however, that no such dedication, sale or transfer shall be effective unless made by an appropriate instrument signed by two-thirds ($\frac{2}{3}$) of the votes of the members of the Corporation, excluding the Declarant and any Builder (as such terms are defined in the Declaration), agreeing to such dedication, sale or transfer.

(e) To borrow or to raise money for any of the purposes of the Corporation, and to issue bonds, debentures, notes, or other obligations of any nature, and in any manner permitted by law, for money so borrowed or in payment for property purchased, or for any other lawful consideration, and, upon authorization of two-thirds ($\frac{2}{3}$) of the votes of the members of the Corporation, excluding the Declaration and any Builder, to secure the payment of the money borrowed and of the interest thereon, by mortgage upon, or pledge or conveyance or assignment in trust of, the whole or any part of the property of the Corporation.

(f) To dedicate, sell or otherwise transfer all or any part of the common areas, property and facilities of the Corporation to any public agency, authority or utility for such purpose and subject to such conditions as may be agreed upon by the members; provided, however, that no such dedication, sale or transfer shall be effective unless made by an appropriate instrument consented to by two-thirds ($\frac{2}{3}$) of the votes of the members of the Corporation, excluding the Declarant and any Builder, agreeing to such dedication, sale or transfer. The granting of easements or dedication of land by the Declarant or the Corporation in accordance with the provisions of the Declaration or the recorded subdivision plats for the Property for public utilities, forest conservation easements, roads or for other public purposes consistent with the intended use of the property by the Corporation and its members shall not be deemed a transfer within the meaning of this subsection or subsection (d) above.

(g) To participate in mergers and consolidations with other nonprofit organizations, organized for the same purpose, provided that any such merger or consolidation shall have the assent of two-thirds ($\frac{2}{3}$) of the members of each class of the membership in the Corporation, voting separately thereon.

(h) To annex to the Property, at any time, and from time to time, other and additional property, open spaces and common areas, or deannex property, within a period of seven (7) years from and after the date of the Declaration, upon the direction of the Declarant, without the consent of the Class A Members (as hereinafter defined) of the Corporation, subject to and in accordance with the Declaration.

(i) To annex to the Property at any time, and from time to time, other and additional property, open space and common areas, provided that any annexation of such other additional property, open space and common areas shall have the assent of two-thirds ($\frac{2}{3}$) of each class of members of the Corporation, voting separately thereon, and the consent of the Declarant, if the Declarant still owns any land within the Property subject to and in accordance with the Declaration.

(j) To have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of Maryland by law may now or hereafter have or exercise.

The Corporation is formed under the articles, conditions and provisions expressed herein and in the general laws of this State. In no event, however, shall the Corporation carry on any activity not permitted to be carried on by a corporation exempt from Federal Income Tax under Sections 501(c) or 528 of the Internal Revenue Code of 1986, as amended to date, or corresponding provision of any future United States Internal Revenue Law; or invest in or use any property in such a manner as to jeopardize the exemption of the Corporation from taxation under Sections 501(c) or 528 of the Internal Revenue Code of 1986, as now in force or hereafter amended.

FOURTH: The post office address of the principal office of the Corporation in this State is c/o Pulte Home Corporation, Suite K, 1501 South Edgewood Street, Baltimore, Maryland 21227. The name and post office address of the resident agent of the Corporation in this State are Amy Fagan, c/o Pulte Home Corporation, Suite K, 1501 South Edgewood Street, Baltimore, Maryland 21227. Such resident agent is a citizen of the State of Maryland and actually resides therein. ✓

FIFTH: The Corporation is not authorized to issue any capital stock. Each member of the Corporation shall be a record owner, as hereinafter defined, of a lot now or hereafter laid out or established in the Property, or in any part of such additional property that may be brought within the jurisdiction of the Corporation. Each member shall be designated either a Class A Member or a Class B Member. A description of each class of membership, with the voting rights and powers of each class, is as follows:

(a) Class A Member: Except for the Declarant and any Builder, which shall initially be the Class B Members, a Class A Member shall be a record owner holding title to one or more lots laid out in the Property, or in any part of such additional property that may be brought within the jurisdiction of the Corporation. Each Class A Member shall be entitled to one (1) vote per lot, for each such lot owned by such member, in all proceedings in which action shall be taken by members of the Corporation.

(b) Class B Member: The Class B Members shall be the Declarant and any Builder. The Class B Members shall be entitled to three (3) votes for each lot or lots within the Property owned by the Class B Members in all proceedings in which action shall be taken by members of the Corporation. Each Builder shall be conclusively presumed, by its having accepted the conveyance from the Declarant of the legal title to a lot to have given the Declarant an irrevocable and exclusive proxy entitling the Declarant to cast all votes of the Builder and to have agreed that such proxy is coupled with an interest, for each such lot owned by such member, in all proceedings in which action shall be taken by members of the Corporation.

(c) Conversion: The Class B membership shall be converted to Class A memberships upon the earliest to occur of (i) thirty (30) days after the date when the total number of votes entitled to be cast by Class A Members of the Corporation equals or exceeds the total number of votes entitled to be cast by the Class B Members of the Corporation; (ii) seven (7) years after the date of the Declaration; or (iii) upon the surrender of the Class B membership by the then holders thereof for cancellation on the books of the Corporation. The Declarant and any Builder shall thereafter remain a Class A Member of the Corporation as to each and every lot owned by the Declarant or such Builder.

Membership in the Corporation shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Corporation. Conversely, every owner of a lot which is subject to assessment by the Corporation shall become and be a member of the Corporation.

The vote for any membership which is owned by more than one person may be exercised by any of the co-owners present at any meeting unless any objection or protest by any other owner of such membership is noted at such meeting. In the event all of the co-owners of any membership who are present at any meeting of the Members are unable to agree on the manner in which the votes for such membership shall be cast on any particular question, then such vote shall not be counted for purposes of deciding that question and in no event may such persons cast more than one (1) vote with respect to any lot. Fractional voting shall not be permitted.

SIXTH: The affairs of the Association shall be managed initially by a board of three (3) directors, which number may be increased or decreased pursuant to the Bylaws of the Corporation, but shall never be less than three (3) nor more than five (5); and the names of the directors who shall act until the first annual meeting or until their successors are duly chosen and qualified are Michael Fitzgerald, Amy Fagan and John Keys. No director need be a member of the Corporation.

SEVENTH: The duration of the Corporation shall be perpetual. The Corporation, however, may be dissolved under and in accordance with the laws of the State of Maryland, provided such dissolution first be authorized, in writing, signed by not less than two-thirds ($\frac{2}{3}$) of the members of the Corporation, or, if there be more than one class of members, then by not less than two-thirds ($\frac{2}{3}$) of each class of members of the Corporation, computed separately, and the consent of the Declarant, if the Declarant still owns any land within the Property or which may be annexed to the Property. Upon any dissolution of the Corporation, after discharge of all corporate liabilities, the Board of Directors shall dispose of all assets of the Corporation, by dedication thereof to any appropriate public agency to be used for purposes similar to those for which the Corporation was formed. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned, if practicable, to any nonprofit corporation, association, trust or other organization as shall at the time qualify as an organization or organizations exempt from taxation under Sections 501(c) or 528 of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States Internal Revenue Law, as the board of directors may determine, preferably to a semi-public agency, to be used in furthering, facilitating or effectuating purposes similar to those for which the Corporation was formed.

EIGHTH: Amendment of these Articles shall require the assent of two-thirds ($\frac{2}{3}$) of the votes of the entire membership. Notwithstanding anything to the contrary contained herein, these Articles may not be amended so as to modify, impair or revoke any right or privilege reserved for the benefit of the Declarant, or so as to impose on the Declarant any obligation which is not also imposed on the Owners without the prior written consent of the Declarant.

NINTH: No director or officer of the Corporation shall be liable to the Corporation or to its members for money damages except (a) to the extent it is proved that such director or officer actually received an improper benefit or profit in money, property or services, for the amount of the benefit or profit in money, property or services actually received, or (b) to the extent a

judgment or other final adjudication adverse to such director or officer is entered in a proceeding based on a finding in the proceeding that such director's or officer's action, or failure to act, was (i) the result of active and deliberate dishonesty or (ii) intentionally wrongful, willful or malicious and, in each such case, was material to the cause of action adjudicated in the proceeding. In all other cases, the Corporation shall, to the maximum extent permitted by law, indemnify all members of the Board of Directors and all officers of the Corporation from and against any and all claims against them which may relate in any way to their status as officers or directors or to their actions or failure to act in such capacity. Neither the amendment nor repeal of this provision, nor the adoption or amendment of any other provision of these Articles, the Declaration or the Bylaws of the Corporation inconsistent with this provision, shall apply to or affect in any respect the applicability of the foregoing with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption.

IN WITNESS WHEREOF, I have signed these Articles of Incorporation and acknowledged the same to be my act on this 29th day of November 2005.

WITNESS:

Christina J Morgan

Nancy Haas
NANCY HAAS

I HEREBY CONSENT TO ACT AS RESIDENT AGENT IN MARYLAND FOR THE ENTITY NAMED IN THE FOREGOING INSTRUMENT.

Amy E. Fagan
AMY E. FAGAN

CUST ID:0001703237
WORK ORDER:0001146275
DATE:11-30-2005 02:28 PM
AMT. PAID:\$175.00