

ARTICLES OF INCORPORATION  
OF

WATERFORD II HOMEOWNERS ASSOCIATION, INC.

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ARTICLE I

NAME

The name of the corporation shall be Waterford II Homeowners Association, Inc. For convenience, the corporation shall be referred to in this instrument as the "Association."

ARTICLE II

ADDRESS

The principal address of the Association is 3399 Bates Creek Road, Lexington, Kentucky 40502.

ARTICLE III

PURPOSES

A. The purposes for which the Association is organized are:

(i) to be and constitute the Association to which reference is made in the Declaration of Covenants, Conditions, and Restrictions for the Coons Property (which is being marketed as Waterford Subdivision), recorded in the public records of Fayette County, Kentucky, as amended from time to time (the "Declaration"), to perform all obligations and duties of the Association, and to exercise all rights and powers of the Association, as specified therein, in the By Laws, and as provided by law; and

(ii) to provide an entity for the furtherance of the interests of the owners in the development.

B. The Association shall make no distributions of income to its members, directors or officers.

C. All terms used herein which are not defined shall have the same meaning provided in the Declaration.

ARTICLE IV

**POWERS**

The powers of the Association shall include those enumerated in KRS 273.171 and shall be governed by the following provisions:

A. The Association shall have all of the common law and statutory powers of a corporation not-for-profit which are not in conflict with the terms of these Articles, the Declaration, and the By Laws of this Association.

B. The Association shall have all of the powers necessary or desirable to perform the obligations and duties and to exercise the rights and powers set out in these Articles, the By Laws, or the Declaration, including, without limitation, the following:

(i) to fix and to collect assessments or other charges to be levied against the Units;

(ii) to manage, control, operate, maintain, repair and improve property subjected to the Declaration or any other property for which the Association by rule, regulation, Declaration or contract has a right or duty to provide such services;

(iii) to enforce covenants, conditions or restrictions affecting any property to the extent the Association may be authorized to do so under any Declaration or By Laws;

(iv) to engage in activities which will actively foster, promote and advance the common interests of all owners;

(v) to buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, hold, use, operate and otherwise deal in and with real, personal and mixed property of all kinds and any right or interest therein for any purpose of the Association;

(vi) to borrow money for any purpose as may be limited in the By Laws;

(vii) to enter into, make, perform or enforce contracts of every kind and description, and to do all other acts necessary, appropriate, or advisable in carrying out any purpose of the Association, with or in association with any other association, corporation, or other entity or agency, public or private;

(viii) to act as agent, trustee or other representative of other corporations, firms or individuals and as such to advance the business or ownership interests in such corporations, firms or individuals;

(ix) to adopt, alter and amend or repeal such By Laws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, such By Laws may not be inconsistent with or contrary to any provisions of the Declaration; and

(x) to provide any and all supplemental municipal services as may be necessary or proper.

The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article IV are independent powers, not to be restricted by

reference to or inference from the terms of any other paragraph or provision of Article IV.

ARTICLE V

MEMBERS

A. The Association shall be a membership corporation without certificate or share of stock.

B. Every person or entity who is the Owner of record of a fee simple or undivided interest in any lot which is subject to the Declaration shall be a member of the Association and shall be entitled to vote in accordance with the formula set forth in the Declaration except there shall be no vote for any lot owned by the Association. The manner of exercising voting rights shall be determined by the By Laws of the Association.

C. Change of membership in the Association shall be established by recording in the public records of Fayette County, Kentucky, a deed or other instrument establishing record title to a Unit subject to the Declaration. The owner designated by such instrument thus becomes a member of the Association and the membership of the prior owner is terminated. Written notice shall be delivered to the Association of such change in title.

D. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner, except as an appurtenance of his lot.

ARTICLE VI

TERM

The Association shall be of a perpetual duration.

ARTICLE VII

DIRECTORS

A. The affairs of the Association shall be conducted, managed and controlled by a Board of Directors. The initial Board of Directors shall consist of three (3) directors.

B. The names and addresses of the initial Board of Directors, who shall hold office until their successors are elected and have qualified, or until removed, are as follows:

D. Ray Ball, Jr., President  
Ball Homes, Inc.  
3399 Tates Creek Road  
Lexington, Kentucky 40502

Don Ball  
Ball Homes, Inc.  
3399 Tates Creek Road  
Lexington, Kentucky 40502

Mira Ball  
Ball Homes, Inc.  
3399 Tates Creek Road  
Lexington, Kentucky 40502

C. The method of election and term of office, removal and filling of vacancies shall be as set forth in the By Laws. The Board may delegate such operating authority to such companies, individuals and committees as it, in its discretion, may determine.

ARTICLE VIII

INDEMNIFICATION

Each person who is or was a member, director, trustee, committee member, or officer of the Association, whether elected or appointed, and each person who is or was serving at the request of the Association as a member, director, trustee, or officer of another corporation, whether elected or appointed, including the heirs, executors, administrators, or estate of any such person,

shall be indemnified by the Association to the full amount against any liability, and the reasonable cost or expense (including attorney fees, monetary or other judgments, fines, excise taxes, or penalties and amounts paid or to be paid in settlement) incurred by such person in such person's capacity as a member, director, trustee, officer, committee member, or employee or arising out of such person's status as a member, director, trustee, officer, committee member, or employee; provided, however, no such person shall be indemnified against any such liability, cost, or expense incurred in connection with any action, suit, or proceeding in which such person shall have been adjudged liable on the basis that personal benefit was improperly received by such person, or if such indemnification would be prohibited by law. Such right of indemnification shall be a contract right and shall include the right to be paid by the Association the reasonable expenses incurred in defending any threatened or pending action, suit, or proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) in advance of its final disposition; provided, however, that such advance payment of expenses shall be made only after delivery to the Association of an undertaking by or on behalf of such person to repay all amounts so advanced if it shall be determined that such person is not entitled to such indemnification. This right of indemnification shall also provide that the officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. Furthermore, the officers and directors shall have no personal liability with respect to any contract or

other commitment made by them in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any repeal or modification of this Article VIII shall not affect any rights or obligations then existing. If any indemnification payment required by this Article VIII is not paid by the Association within 90 days after a written claim has been received by the Association, the member, director, trustee, officer, committee member, or employee may at any time thereafter bring suit against the Association to recover the unpaid amount and, if successful in whole or in part, such person shall be entitled to be paid also the expense of prosecuting such claim. The Association shall maintain insurance, as a common expense, to protect itself and any such person against any such liability, cost, or expense, whether or not the Association would have the power to indemnify such person against such liability, cost, or expense under the Kentucky Nonprofit Corporation Acts or under this Article VIII, if such insurance is reasonably available. The indemnification provided by this Article VIII shall not be deemed exclusive of any other rights which those seeking indemnification may have or hereafter acquire under any bylaw, agreement, statute, vote of members or board of directors, or otherwise. If this Article VIII or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then the Association shall nevertheless indemnify each such person to the full extent permitted by any applicable portion of this

Article VIII that shall not have been invalidated or by any other applicable law.

ARTICLE IX

LIABILITY OF DIRECTORS

The liability of each and all of the directors of this Association shall be and is hereby limited to the greatest extent permitted by law and no director of the Association shall be liable to the Association for monetary damages for breach of such director's duties as a director, except for the following (which exceptions shall be construed as narrowly as legally permissible):

1. For any transaction in which the director's personal financial interest is in conflict with the financial interests of the Association;

2. For acts or omissions not in good faith or which involve intentional misconduct or are known to the director to be a violation of law; or

3. For any transaction from which the director derives an improper personal benefit.

In addition to the limitation on a director's liability stated hereinabove, no action taken as a director and no failure to take action as a director shall be the basis for monetary damages or injunctive relief unless:

A. The director has breached or failed to perform the duties of the director's office in compliance with the general standards for directors as set forth in KRS 273.215; and

B. In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety or property.



If the Kentucky Nonprofit Corporation Acts are amended after approval of this Article IX to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Association shall be deemed to be eliminated or limited by this provision to the fullest extent then permitted by the Kentucky Nonprofit Corporation Acts, as so amended. Any repeal or modification of this Article IX shall not adversely affect any right or protection of a director of the Association existing at the time of such repeal or modification.

ARTICLE X

BY LAWS

The By Laws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded in the manner provided by the By Laws.

ARTICLE XI

AMENDMENTS

Amendments to the Articles of Incorporation may be proposed and adopted as provided in KRS 273.263 provided that no amendment may be in conflict with the Declaration, and provided, further, no amendment shall be effective to impair or dilute any rights or members that are governed by such Declaration.

ARTICLE XI

INCORPORATORS

The name and address of the incorporator of these Articles of Incorporation is as follows:

Rena G. Wiseman  
Stoll, Keenon & Park  
1000 First Security Plaza  
Lexington, Kentucky 40507

ARTICLE XII

REGISTERED OFFICE AND AGENT

BOOK 0178 PAGE 481

The initial registered office of the Association is 3399 Tates Creek Road, Lexington, Kentucky 40502, and the initial registered agent at such address is D. Ray Ball, Jr.

IN WITNESS WHEREOF, the incorporator has hereunto affixed her signature this 16<sup>th</sup> day of September, 1992.

Rena G. Wiseman  
RENA G. WISEMAN

STATE OF KENTUCKY

COUNTY OF FAYETTE

The foregoing Articles of Incorporation were acknowledged before me this 16<sup>th</sup> day of September, 1992, by Rena G. Wiseman.

My Commission Expires: Aug 14 1995

Lisa Pasbe  
NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

STOLL, KEENON & PARK  
201 East Main Street  
Suite 1000  
Lexington, Kentucky 40507  
(606) 231-3000

BY: Rena G. Wiseman  
Rena G. Wiseman

STATE OF KENTUCKY  
COUNTY OF FAYETTE SGT.

I, DONALD W. BLEVINS, CLERK OF SAID COUNTY COURT HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT HAS BEEN DULY RECORDED IN CORPORATE RECORD BOOK 178 PAGE 422 IN MY SAID OFFICE.

DONALD W. BLEVINS, CLERK  
BY J. D. D.C.

DONALD W. BLEVINS  
FAYETTE COUNTY CLERK  
BY [Signature]

PAID \$ 16.00 TAX  
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