

**ARTICLES OF INCORPORATION**

**DRAKE ESTATES HOMEOWNERS ASSOCIATION, INC.**

Pursuant to §55A-2-02 of the General Statutes of North Carolina, the undersigned does hereby submit these Articles of Incorporation for the purpose of forming a nonprofit corporation.

**I.**

The name of the corporation (the "Corporation") is:

**Drake Estates Homeowners Association, Inc.**

**II.**

The initial registered office of the Corporation shall be:

2520 Reliance Avenue  
Apex, NC 27539  
Wake County

**III.**

The mailing address of the initial registered office of the Corporation is:

2520 Reliance Avenue  
Apex, NC 27539  
Wake County

**IV.**

The initial registered agent of the Corporation shall be Joel Geniesse.

**V.**

The name and address of the incorporator is:

Joel Geniesse  
2520 Reliance Avenue  
Apex, NC 27539  
Wake County

VI.

The Corporation shall have two (2) classes of Members as provided in the bylaws of the Corporation (the "**Bylaws**"). Members shall have the voting rights as provided in the Bylaws.

VII.

The Corporation shall have perpetual duration, unless sooner terminated in accordance with the Bylaws and Declaration, as applicable.

VIII.

The purposes for which the corporation is organized are to provide for the ownership, management and operation of the "Area of Common Responsibility" (as that term is defined in the Declaration of Covenants, Restrictions, and Easements for Drake Estates which has been or will be recorded with the Wayne County Register of Deeds, as the same may be amended, supplemented and/or amended and restated from time-to-time (the "**Declaration**")); the enforcement of the covenants and restrictions set forth in the Declaration; to levy assessments against the Members of the Corporation in accordance with the terms and provisions of the Declaration in order to raise the funds required by the Corporation to defray expenses which the Corporation shall incur in carrying out such purposes; and for such other purposes as may be contemplated under the Declaration except as otherwise expressly limited hereby or by the North Carolina Planned Community Act, currently contained in Chapter 47F of the North Carolina General Statutes (the "**Act**") or the North Carolina Nonprofit Corporation Act (the "**Nonprofit Corporation Act**"), currently contained in Chapter 55A of the North Carolina General Statutes. The Corporation shall have all powers and rights necessary or convenient to perform and exercise any rights or powers, and to perform any duty or obligation, of the Association under the Declaration except as expressly limited hereby, the Nonprofit Corporation Act or the Act.

## IX.

The Corporation is organized as a nonprofit, nonstock, membership corporation for the sole purposes set forth above related to the residential subdivision development (the “**Development**”) in Wayne County, North Carolina, commonly known as “Drake Estates.” To the extent, and only to the extent, necessary to carry out such purpose, the Corporation (a) shall have all of the powers of a corporation organized under the Nonprofit Corporation Act and (b) shall have the power to exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Corporation as set forth in the Bylaws and in the Declaration. Unless otherwise defined herein, all capitalized terms in these Articles of Incorporation shall have the same meaning as ascribed to such capitalized terms in the Bylaws or Declaration (if not defined in the Bylaws).

No part of the net earnings, gains or assets of the Corporation shall inure to the benefit of or be distributable to its directors, officers, other private individuals, or organizations organized and operated for a profit (except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of the Corporation as herein stated). No substantial part of the activities of the Corporation shall be the direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these Articles of Incorporation, the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt for federal income tax under Section 501(c)(6) and Section 528 of the Internal Revenue Code, or corresponding section of any future federal tax code.

Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the corporation, dispose of all of the assets of the corporation exclusively for the purposes of the corporation in such manner, or to such organization or organizations organized and operated exclusively for religious, charitable, educational, scientific or literary purposes as shall at the time qualify as an exempt organization or organizations under the Code as the Board of Directors shall determine or to federal, state, or local governments to be used exclusively for public purposes. Any such assets not so disposed of shall be disposed of by the Superior Court of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organizations, as such court shall determine, which are organized and operated exclusively for such purposes, or to such governments for such purposes.

#### X.

No director of the Corporation shall be personally liable to the Corporation or its Members for monetary damages for breach of fiduciary duty of care or other duty as a director, except that this Article X shall not eliminate or limit the liability of a director: (i) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or (ii) for any transaction from which the director derives an improper personal benefit. Neither the amendment nor repeal of this Article X, nor the adoption of any provision of these Articles of Incorporation inconsistent with this Article X, shall eliminate or reduce the effect of this Article X in respect of any act or failure to act, or any cause of action, suit or claim that, but for this Article X, would accrue or arise prior to any amendment, repeal or adoption of such an inconsistent provision. If the North Carolina Nonprofit Corporation Code is subsequently amended to provide for further limitations on the personal liability of directors of corporations for breach of duty of care or other



duty as a director, then the personal liability of the directors of the Corporation shall be so further limited to the greatest extent permitted by the North Carolina Nonprofit Corporation Code.

XI.

These Articles of Incorporation may be amended only upon a resolution, duly adopted by the Board of Directors, the affirmative vote of members other than the Declarant who own at least two-thirds (2/3rds) of the Lots, and the consent of the Declarant, so long as the Declarant owns any Lot or possesses the authority to annex real property into the Development pursuant to the Declaration.

Notwithstanding anything to the contrary contained herein, so long as the Declarant owns any Lot or possesses the authority to annex real property into the Development pursuant to the Declaration, Declarant shall have the unilateral right, with the Initial Builder's consent during the Initial Builder Period, to amend the Articles of Incorporation in a manner not inconsistent with the rights of the Members under the Act or the Nonprofit Corporation Act or otherwise prohibited by the Declaration and as more fully set forth in the Declaration, and such right shall include, without limitation, an amendment for the purposes of adding a new class of membership.

XII.

The address and county of the principal office of the Corporation is:

2520 Reliance Avenue  
Apex, NC 27539  
Wake County

XIII.

If any paragraph, section, sentence, clause or phrase of these Articles of Incorporation (as may be amended, supplemented and/or amended and restated, the "Articles") shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be

illegal, null or void, the remaining paragraphs, sections, sentences, clauses and phrases hereof shall continue in full force and effect and shall not be affected thereby. To the extent that any provision of the Articles is determined to be overly broad or unenforceable and a narrower or partially enforceable construction may be given to such provision without destroying its intent, then the narrower or partially enforceable provision shall be applied and, to the extent lawful, shall be enforced. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void. Whenever there exists a conflict among the Declaration, the Articles, Bylaws or any other document of the Association, the provisions of the Declaration shall control, except as to matters of compliance with the Nonprofit Corporation Act, in which event the Articles shall control. Whenever there is a conflict between the provisions of the Articles and Bylaws, the provisions of the Articles shall control. With respect to the foregoing, specific provisions shall control general provisions, except that a construction consistent with the Act, the Nonprofit Corporation Act and other Legal Requirements shall in all cases control over any construction inconsistent therewith.

XIV.

These Articles shall be effective upon filing.

**[INCORPORATOR'S SIGNATURE FOLLOWS]**

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation  
on June 6<sup>th</sup>, 2022.

  
Joel Geniesse, Incorporator