

ARTICLES OF INCORPORATION
OF
WISTERIA CONDOMINIUMS OWNERS ASSOCIATION, INC.

(A Corporation not for profit)

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 adopt the following Articles of Incorporation and certify as follows:

1. **NAME.** The name of the corporation is "Wisteria Condominiums 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 own, operate, maintain, manage, repair, and replace Common Areas of Wisteria Condominiums and all appurtenances thereto, which is situated in the County of Lee, State of Alabama and described as follows:

**SEE EXHIBIT A, ATTACHED HERETO AND INCORPORATED
HEREIN BY REFERENCE AS IF FULLY SET FORTH**

all of the foregoing being hereinafter referred to as the "Wisteria Condominiums" or the "Property."

- (b) To perform and carry out the acts, duties, responsibilities, and conditions delegated to the Association in the Declaration under Alabama Uniform Condominium Act, these Articles of Incorporation, the Bylaws of this Association and all amendments thereto, and all the powers enumerated in Section 35-8A-302 Code of Alabama, 1975.
- (c) To make, establish and enforce reasonable rules and regulations governing the administration, operation, and management of the Property.
- (d) To make, levy, collect, and enforce assessments, as defined in the Declaration, and to use and expend such Assessments in the manner set forth in the Declaration.
- (e) To employ personnel and contract for services, material, and labor, including contracting for the management of the Common Areas.
- (f) 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.

- (g) To sue and be sued, complain and defend in its corporate name.
- (h) To enter into, make, and perform contracts of every kind for any lawful purpose without limit as to the amount, with any person, firm, association, partnership, limited partnership, corporation, municipality, county, state, territory, government, governmental subdivision, or body politic.
- (i) 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 purposes of the Association in accordance with and subject to the terms and provisions of the Declaration.

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:

Miles Hill
 730 N. Dean Road, Suite 200
 Auburn, AL 36830

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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 Units in Park Place Condominiums. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Unit. The voting rights of any member may be limited and suspended in accordance with the provisions of the Declaration.

7. DIRECTORS.

(a) **Number of Directors.** Subject to the terms of the Declaration, which shall be deemed controlling in the event of any conflict with these Articles, the affairs of the Association shall be managed by a Board of Directors. The number of Directors constituting the initial Board of Directors shall be two (2). Thereafter, the number of Directors and may be increased or decreased from time to time by action of a majority of the Board of Directors: provided, however that (i) the number of Directors shall in no event consist of less than two (2) Directors, (ii) no decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director. 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:

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Miles Hill
730 N. Dean Road, Suite 200
Auburn, AL 36830

Fred Bennett
730 N. Dean Road, Suite 200
Auburn, AL 36830

(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 Declaration, 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.

(d) **Conflicts of Interest.** No contract or other transaction between the Association and one or more of its Directors or any other corporation, firm association, or entity in which one or more of its Directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest. Any Director of the Association or any corporation, firm, association, or entity of which any Director of the Association is a director or officer or is financially interested may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Association, provided that such relationship or interest in such contract or transaction shall be disclosed or known to the Board of Directors at a meeting of the Board of Directors or a committee thereof which authorized, approves, or ratifies such contract or transaction and, if such fact shall be disclosed or known, any Director so related or interested may be counted in determining a quorum at such meeting and may vote on such matter or action with the same force and effect as if he were not so related or interested. Any Director of the Association may vote on any contract or other transaction between the Association and any affiliated corporation without regard to the fact that he is also a director of such affiliated corporation.

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

Wisteria, LLC
720 N. Dean Road, Suite 200
Auburn, Alabama 36830

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

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(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 Wisteria Condominiums, LLC shall be returned to Wisteria Condominiums, LLC 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 PRESIDENT TO EXECUTE DOCUMENTS. The President and each Vice President of the Association shall each have the authority to execute all instruments, documents, and contracts on behalf of the Association.

11. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES, 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, or agent of the Association, or is or was serving at the request of the Association as a Director, officer, partner, employee, or agent of another corporation, partnership, 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, no reasonable cause to believe his conduct was unlawful. The termination of any claim, action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which 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 reasonable cause to believe that 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, or agent of the Association, or is or was serving at the request of the Association

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as a Director, officer, partner, employee, or agent of another corporation, partnership, 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 of 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 the 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 court shall deem proper.

(c) To the extent that a Director, officer, employee, or agent of the Association has been successful on the merits or otherwise in the 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, or agent is proper in the circumstances because he has meet the applicable standard of conduct set forth in Paragraphs 11(a) and (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 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, or agent to repay such amount if and to the extent that it shall 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, Bylaw, 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, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

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(g) The Association shall have power to purchase and maintain insurance in behalf of any person who is or was a Director, officer, employee, or agent of the Association, or is or was serving at the request of the Association as a Director, officer, partner, employee, or agent of another corporation, partnership, 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 may be amended, subject to the terms and conditions of the Declaration, 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 Declaration 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 and the Declaration, then the provisions of the Declaration shall at all times control.

IN WITNESS WHEREOF, the undersigned Incorporator has hereunto subscribed its name to these Articles of Incorporation as of this the 11th day of FEBRUARY, 2004.

IN THE PRESENCE OF:

Wisteria, LLC, Incorporator
By: Miles Hill
Its: Managing Member



By: 
_____ Miles Hill, Managing Member

STATE OF ALABAMA)
COUNTY OF LEE) ss

The undersigned notary public hereby certifies that Miles Hill whose name is signed to the foregoing instrument as Managing Member of Wisteria, LLC, the Incorporator, and who is known to me, acknowledged before me this day, that being informed of and understanding the contents of same, that he executed the same voluntarily as such officer for and on behalf of Wisteria, LLC on the day the same bears date.

Given under my hand and seal on this 11 th day of FEBRUARY, 2004

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Cynthia D. Boxxe

Notary Public

My Commission Expires: **MY COMMISSION EXPIRES MAY 11, 2004**

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EXHIBIT A

PARCEL I - NORTH SIDE OF HARVARD DRIVE

Commencing at the Northeast corner of Section 20, Township 19 North, Range 26 East, City of Auburn, Lee County, Alabama, as shown on a plat recorded in Plat Book 19, Page 176, Lee County, Alabama; THENCE South 17 degrees 05 minutes 48 seconds West for a distance of 2,541.51 feet to an Iron Pin Set and the POINT OF BEGINNING of the parcel herein described. THENCE South 01 degrees 37 minutes 41 seconds West for a distance of 153.98 feet to an Iron Pin Found of the Northerly right-of-way of Harvard Drive; THENCE along said right of way on a curve to the right having a radius of 110.17 feet and an arc distance of 85.69 feet, said arc being subtended by a chord of Noth 68 degrees 07 minutes 41 seconds West for a distance of 83.54 feet to an Iron Pin Set; THENCE continuing along said right-of-way North 45 degrees 50 minutes 47 second West for a distance of 119.27 feet to an Iron Pin set; THENCE continuing along said right-of-way North 45 degrees 50 minutes 47 seconds West for a distance of 92.03 feet to an iron Pin set; THENCE continuing along said right-of-way on a curve to the right having a radius of 174.99 feet and an arc distance of 121.85 feet; said arc being subtended by a chord of North 25 degrees 53 minutes 50 seconds West for a distance of 119.40 feet to an Iron Pin Found; THENCE North 89 degrees 10 minutes 38 seconds East for a distance of 85.07 feet to an Iron Pin Set; THENCE South 31 degrees 23 minutes 38 seconds East for a distance of 54.32 feet to an Iron Pin Set THENCE South 63 degrees 18 minutes 03 seconds East for a distance of 75.97 feet to an Iron Pin Found; thence South 63 degrees 18 minutes 03 seconds East for a distance of 116.90 feet to an Iron Pin and the POINT OF BEGINNING. Said property contains .0863 acres more or less. Together with and subject to covenants, easements and restrictions of record.

PARCEL II - SOUTH SIDE OF HARVARD DRIVE

Commencing at the Northeast corner of Section 20, Township 19 North, Range 26 East, City of Auburn, Lee County, Alabama, as shown on a plat recorded in Plat Book 19, Page 176, Lee County, Alabama; THENCE South 17 degrees 05 minutes 48 seconds West for a distance of 2,541.51 feet to an Iron Pin Set; THENCE North 63 degrees 18 minutes 03 seconds West for a distance of 192.87 feet to an Iron Pin Set; THENCE North 31 degrees 23 minutes 38 seconds West for a distance of 54.32 feet to an Iron Pin Set; THENCE South 89 degrees 10 minutes 38 seconds West for a distance of 85.07 feet to an Iron Pin Found of the Easterly right-of-way of Harvard Drive; THENCE South 24 degrees 55 minutes 37 seconds West for a distance of 77.72 feet to an Iron Pin Set on the Westerly right-of-way of Harvard Drive and the POINT OF BEGINNING of the parcel herein described; THENCE South 89 degrees 09 minutes 13 seconds West for a distance of 106.90 feet to an Iron Pin Set; THENCE North 00 degrees 47 minutes 25 seconds West for a distance of 199.96 feet to an Iron Pin Set; THENCE North 89 degrees 09 minutes 13 seconds East for a distance of 90.00 feet to an Iron Pin Set on the Westerly right-of-way of Harvard Drive; THENCE continuing along said right-of-way South 00 degrees 50 minutes 47 seconds East for a distance of 104.96 feet to an Iron Pin Set; THENCE continuing along said drive South 00 degrees 50 minutes 47 seconds East for a distance of 9.46 feet to an Iron Pin Set; THENCE continuing along said right-of-way on a curve to the left having a radius of 224.99 feet an arc distance of 87.75, said arc being subtended by a chord of South 12 degrees 01 minutes 20 seconds East for a distance of 87.19 feet to an Iron Pin and the POINT OF BEGINNING. Said property contains 0.424 acres more or less. Together with and subject to covenants, easements and restrictions of record.

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