

**ARTICLES OF INCORPORATION  
OF  
TUSCANY HILLS  
HOMEOWNERS' ASSOCIATION, INC.**

**KNOW BY ALL THESE PRESENTS:** That the undersigned, desiring to form a non-profit corporation for the purposes hereinafter set forth, pursuant to the provisions of the Alabama Nonprofit Corporation Act, Code of Alabama (1975), Sections 10-3A-1, *et seq.*, does hereby make and subscribe his name to these Articles of Incorporation and certifies as follows:

**ARTICLE I  
NAME**

The name of the corporation shall be "Tuscany Hills Homeowners' Association, Inc." (hereinafter referred to as the "Association").

**ARTICLE II  
DURATION**

The period of duration of the Association shall be perpetual.

**ARTICLE III  
PURPOSES**

The purposes for which the Association is organized are:

- (1) To enforce the covenants contained in the Declaration of Covenants, Conditions and Restrictions of Tuscany Hills (hereinafter "the Declaration"), and to make, establish, and enforce reasonable rules and regulations governing the administration, management, and use of the Subdivision.
- (2) To establish a budget for the operations of the Subdivision; to designate those expenses which shall constitute the common expenses of the Subdivision; to make, levy and collect assessments against lot owners to provide the funds to pay for common expenses, and to use and expend the proceeds of assessments in the exercise of the powers and duties of the Association.
- (3) To own, maintain, repair, replace, and operate those portions of the Subdivision that the Association has the duty or right to maintain, repair, replace, and operate under the Declaration, these Articles of Incorporation, and the Bylaws of this Association, and all amendments thereto.
- (4) To contract for the management of the common areas and all other portions of the Subdivision and to delegate such agent(s) all or some of the powers, duties, and responsibilities of the Association.

(5) To employ personnel and contract for the performance of services, material and labor required for proper operation and maintenance of the Subdivision.

(6) To purchase and maintain all forms of insurance on the Subdivision property for the protection of the Association, its officers, directors and its Members.

(7) To retain legal counsel at the expense of the Association and to enforce by legal and equitable action the provisions of the Declaration and/or rules and regulations of the Association as may from time to time be necessary.

(8) To pay taxes and assessments which are liens against any part of the common area other than individual lots (unless individual lots are owned by the Association) and the appurtenances thereto, and assess the same against the lots subject to liens for such purposes.

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

(10) 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.

(11) To purchase, lease, or otherwise lawfully acquire and hold all materials, fixtures, machinery, office supplies, furniture and equipment, and other apparatus, of whatever nature, if the same shall be necessary or incident to the business aforesaid.

(12) To purchase, acquire, hold, improve, develop, manage, sell, convey, transfer, assign, release, mortgage, encumber, lease, dispose of, hire and deal in, either alone or in conjunction with others, real and personal property.

(13) To acquire the good will, rights and property, and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation; to pay for the same in cash, bonds or otherwise; to hold or in any lawful manner to dispose of the whole or any part of the property so purchased; to handle in any lawful manner the whole or any part of the property so purchased; to conduct in any lawful manner the whole or any part of any business so acquired and to exercise all the powers necessary or convenient in and about the conduct and management of such business.

(14) To guarantee, purchase or otherwise acquire, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock, bonds, or other evidences of indebtedness created by other corporations, and while the holder of such stock, to exercise all the rights and privileges of ownership, including the right to vote thereon, to the same extent as a natural person might or could do.

(15) To borrow money for any of the purposes of the Association and to issue notes and other obligations thereof, with or without security, and to pledge or mortgage the whole, or any part of its property, real or personal; and to draw, make, accept, endorse, discount, guarantee, execute and issue promissory notes, bills of exchange, drafts, warrants, and all kinds of obligations and certificates and negotiable or transferable instruments.

(16) To have one or more offices and to conduct any or all of its operations and business and to promote its objects within the State of Alabama, without restrictions as to place or amount.

(17) To establish lines of credit with banking houses or elsewhere, for the purposes hereinbefore and set forth, and to incur indebtedness, and to raise, borrow, and secure the payment of money in any lawful manner for any purposes in or about its business or affairs without limit as to amount.

(19) To do any and all things herein set forth and in addition, such other acts and things as are necessary or convenient to attainment of the purpose of this corporation, or any of them, to the same extent as natural persons might or could do in any part of the world, insofar as such acts are permitted to be done by a non-profit corporation organized under the laws of the State of Alabama.

The foregoing clauses may be constructed as objects and powers and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of the Association. In addition to the objects aforesaid, the Association shall have the power to conduct and carry on any business or activity not prohibited by law, nor required by law to be specifically stated in these Articles.

#### ARTICLE IV ASSOCIATION FUNDS AND PROPERTY

The 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.

The Association shall pay no dividend, and shall distribute no part of its income to its Members, Directors, or Officers. Nevertheless, the Association may pay compensation in a reasonable amount to its Members, Directors and Officers for services rendered, and it may confer benefits on its Members in conformity with the Declaration and the purposes of the Association. On termination, the Association may make distributions to its Members as permitted by law, and no such payment, benefit, or distribution shall be deemed to be a dividend or distribution of income. All funds and property acquired by the Association and all proceeds therefrom shall be held and used for the benefit of the Members of the Association in accordance with the provisions of the Declaration, these Articles, and the Bylaws.

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.

**ARTICLE V**  
**MEMBERS**

The members of the Association shall be the owners of a lot or dwelling in the Subdivision. Association Membership shall be appurtenant to, and may not be separated from, ownership of a lot or dwelling. Developer (as defined by the Declaration) shall be entitled to all voting rights attributable to any Lots or Dwellings owned by Developer (as defined by the Declaration).

Notwithstanding anything provided herein or in the Bylaws of the Association to the contrary, for so long as Developer owns any lot or dwelling in the Subdivision, other than a dwelling used by Developer for a personal residence:

(a) Developer shall have the sole and exclusive right to (i) elect the Board of Directors of the Association; (ii) appoint the officers of the Association and the members of the Architectural Control Committee (herein the "ACC"), as defined in the Declaration; (iii) remove and replace any members of the Board of Directors of the Association, the officers of the Association, and the members of the ACC; (iv) amend these Articles of Incorporation and the Bylaws; (v) amend the Declaration (subject to the limitations set forth in Section 10.2 of the Declaration); and (vi) take all other action on behalf of the Association and vote on all other matters required to be voted on or approved by the members of the Association (except to the extent all members are entitled to vote on the matters described in item (b) below of this Paragraph 5); and

(b) The voting rights of the members of the Association shall be limited to (i) approving increases in the annual assessments and any special Assessments; and (ii) approving amendments to the Declaration if such approval is required pursuant thereto. As long as Developer is the owner of any lot or dwelling in the Subdivision, other than a dwelling used by Developer for a personal residence, the members shall have no further voting rights or privileges in the Association. At such time as Developer no longer owns any lot or dwelling within the Subdivision, the members shall be entitled to vote on all of the foregoing matters subject to any restrictions set forth in the Declaration. The voting rights of any member may be limited and suspended in accordance with the provisions of the Declaration.

**ARTICLE VI**  
**BOARD OF DIRECTORS**

(a) *Number of Directors.* 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 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); (ii) no decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director; (iii) Developer shall have the right to elect all members of the Board of Directors of the Association as long as Developer owns any lot or dwelling in the Subdivision; and (iv) at such time as Developer no longer owns any lot or dwelling in the Subdivision, the members of the Association shall elect a new Board of Directors of the Association. 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:

<u>NAME</u>	<u>ADDRESS</u>
Patrick J. Salatto III	724 N. Dean Rd Auburn, AL 36830
Fred Pearson	1018 Woodley Road Montgomery, AL 36106
Innes T. McIntyre, IV	1018 Woodley Road Montgomery, AL 36106

(b) *Removal.* For so long as Owner owns any lot or dwelling within the Subdivision, other than a dwelling used by the Developer for a personal residence, Developer 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 or otherwise fill any vacancies on the Board, in each case without any consent or approve any of the members. At such time as Developer no longer owns any lot or dwelling within the Subdivision, 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 by 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 the meeting of the Board of Directors or a committee thereof which authorizes, 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.

**ARTICLE VII**  
**OFFICERS**

The Officers of the corporation shall consist of a President, Vice-President, Secretary and Treasurer. More than one office may be held by one person, except for the President and Secretary. Each said Officer shall be elected or appointed at such time and in such manner and for such terms as may be prescribed by the Bylaws. The initial Officers of the Corporation who will serve until election or appointment of their successors, in accordance with the Bylaws, with their respective addresses, are as follows:

<u>OFFICE</u>	<u>NAME</u>	<u>ADDRESS</u>
President/ Treasurer	Innes T. McIntyre, IV	1018 Woodley Road Montgomery, AL 36106
Vice President/ Secretary	Patrick J. Salatto III	724 N. Dean Rd Auburn, AL 36830

**ARTICLE VIII**  
**INCORPORATORS**

The name and address of each incorporator is as follows:

Patrick J. Salatto III  
724 N. Dean Rd  
Auburn, AL 36830

Innes T.M cIntyre, IV  
1018 Woodley Road  
Montgomery, AL 36106

**ARTICLE IX**  
**INDEMNIFICATION**

(1) 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, had 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 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.

(2) 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 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 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 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.

(3) To the extent that a Director, Officer, employee, 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 (1) and (2) above, or in defense of any claim, issue or matter therein, he shall be indemnified against such 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.

(4) Any indemnification under Paragraphs (1) and (2) 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, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in the Paragraphs (1) and (2) 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.

(5) 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 (4) 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 be ultimately determined that he is not entitled to be indemnified by the Association as authorized in Article 9.

(6) The indemnification authorized by this Article 9 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, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

(7) The Association shall have power to purchase and maintain insurance on 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 of the provisions of this Article 9.

#### ARTICLE X AMENDMENT

For so long as Developer owns any lot or dwelling within the Subdivision, other than a dwelling used by Developer as a personal residence, these Articles of Incorporation may be amended at any time and from time to time by Developer or by the vote of the Board of Directors of the Association, without the consent or approval of any of the members of the Association. At such time as Developer no longer owns any lot or dwelling within the Subdivision, then these Articles of Incorporation may be amended, subject to the terms and provisions of the Declaration, by the affirmative vote of at least two-thirds (2/3) of the total votes in the Association.

#### ARTICLE XI REGISTERED AGENT

The registered office of said Corporation shall be 724 N. Dean Rd Auburn, AL 36830, and the initial registered agent is Patrick J. Salatto, III. The mailing address of the Corporation shall be 724 N. Dean Rd Auburn, AL 36830.



**ARTICLE XII**  
**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 in these Articles of Incorporation and the Declaration, then the provisions of the Declaration shall at all times control.

IN TESTIMONY WHEREOF, the said Incorporators hereto sign and subscribe their names and file the same for record in the Office of the Judge of Probate of Lee County, Alabama, and asks that the Probate Judge of said county endorse thereon his certificate for recording showing the book wherein recorded and for the purpose of perfecting the formation of said Corporation in the manner and form provided by law on this the 1<sup>st</sup> day of August 2007.

INCORPORATORS:

  
\_\_\_\_\_  
Patrick J. Salatto III

  
\_\_\_\_\_  
Innes T. McIntyre, IV

STATE OF ALABAMA  
COUNTY OF LEE

I, the undersigned authority, a notary public for said County and State hereby certify that Patrick J. Salatto, III, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this date that being informed of the contents of said instrument he executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 1<sup>st</sup> day of August, 2007.

Notary Public J. M. Meadows  
My commission expires: \_\_\_\_\_

JENNIFER M. MEADOWS  
NOTARY PUBLIC  
STATE OF ALABAMA  
MY COMMISSION EXPIRES JAN. 17, 2008

STATE OF ALABAMA  
COUNTY OF LEE

I, the undersigned authority, a notary public for said County and State hereby certify that Innes T. McIntyre, IV, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this date that being informed of the contents of said instrument he executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 1<sup>st</sup> day of August, 2007.

Notary Public J. M. Meadows  
My commission expires: \_\_\_\_\_

JENNIFER M. MEADOWS  
NOTARY PUBLIC  
STATE OF ALABAMA  
MY COMMISSION EXPIRES JAN. 17, 2008

Book/Pg: 1283/1  
Term/Cashier: SCAM1 / AP  
Trans: 2071.41865.57235  
Recorded: 08-03-2007 14:41:36  
REC Recording Fee  
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30.00