

**ARTICLES OF INCORPORATION
OF
THE ORCHARDS HOMEOWNERS ASSOCIATION, INC.**

TO THE HONORABLE JUDGE OF PROBATE OF MONTGOMERY COUNTY, ALABAMA:

The undersigned incorporator, desiring to form a nonprofit corporation under the Alabama Nonprofit Corporation Act (Section 10-3A-1 et seq. of the Code of Alabama), does hereby adopt the following Articles of Incorporation (sometimes hereinafter referred to as the "Articles");

**ARTICLE I
NAME**

The name of the corporation is The Orchards Homeowners' Association, Inc. (the "Association").

**ARTICLE II
REGISTERED OFFICE**

The address of the initial registered office of the Association is located at 13266 US Highway 31, Hope Hull, AL 36043, and the initial registered agent located at such address is Christopher Lee Newell.

**ARTICLE III
PURPOSES AND POWERS OF THE ASSOCIATION**

This Association is organized as a nonprofit corporation, not for the pecuniary gain or profit to its members, and no part of the net earnings or income of which is distributable to its members. The specific objects and purposes for which the Associate is being formed are as follows:

- A. To promulgate, provide and enforce design and construction standards applicable to the members of the Association and their property.
- B. To own, acquire (by purchase, exchange, contribution, dedication, conveyance or otherwise), build, operate, hold, manage, and maintain real and personal property, including, without limitation, lakes, ponds, water features, common drives and footways, private roadways, and other improvements and structures, which the Board

of Directors deems to be of benefit to the members of the Association; and to maintain, improve, and repair other areas and structures beneficial or useful to the membership of the Association; and

- C. To establish, fix and determine assessments (whether denominated as general, special or specific assessments) and charges to be levied against the members of the Association in order to fund the expenses of the Association in its carrying out of its purposes; and
- D. To enforce any and all covenants, restrictions, rules, regulations, declarations, and agreements applicable to the Association's property, to property owned by a member of the Association or to the member himself or herself; to pay taxes, if any, on the property owned by the Association; and insofar as permitted by law, to do any other thing that, in the discretion of the Board of Directors, will promote the common benefit and enjoyment of the membership; and
- E. To own, acquire (by purchase, exchange, contribution, dedication, conveyance or otherwise), operate, hold, maintain, repair and manage property owned by the Association; to perform and carry out the acts and duties incident to the ownership, administration, operation and management of said property as required under the terms, provisions, and conditions contained in these Articles of Incorporation, the Bylaws of the Association (as amended and in effect from time to time) and the Declaration (as defined herein); and to own, operate, maintain, lease, sell, exchange, hold, trade and otherwise deal with such property, whether real, personal, or mixed, as may be necessary or convenient to carry out the purposes of the Association; and
- F. To provide for or arrange any and all of the following projects, services, facilities, programs, systems and properties: walkways, trees, paths, trails, flowers and landscaping (which may include regular lawn care such as mowing and fertilizing), fountains, benches, shelters, directional and informational signs; storage and maintenance yards, garages and other buildings and facilities deemed necessary or desirable by the Board of Directors in connection with the administration, management, control and operation of the Association; and any and all other improvements, facilities, projects, programs, systems, properties and services that the Board of Directors shall find to be necessary, desirable, or beneficial to the interests of the members of the Association; and
- G. To exercise such powers and authorities as are provided in the Declaration and to do such other things as may be necessary or proper for the carrying out and accomplishment of the above objects and purposes and of such other objects and purposes as are deemed necessary and proper by the Board; and
- H. To engage in any and all activities that the Association is not prohibited from engaging in under these Articles of Incorporation or under the Alabama Nonprofit Corporation Act (the "Act"); and
- I. To exercise all of the powers and privileges, and to perform all of the duties and obligations, of the Association as set forth in these Articles, the Bylaws, and the Declaration (as defined herein) or under the Act;
- J. To have and exercise any and all powers, rights, benefits and privileges which a nonprofit corporation organized under the Act may now or hereafter have;

K. In furtherance of the aforesaid objects, purposes and powers, the Association shall have and may exercise all of the powers of a nonprofit corporation organized and existing under the laws of the State of Alabama, which powers shall include, but not be limited to, the powers:

1. To make, fix, levy, collect and enforce assessments (whether denominated as general, special or specific assessments) and charges, in such amounts and at such times as determined in the sole discretion of the Board subject to the Association's Bylaws and that certain Declaration of Covenants, Conditions, Restrictions and Easements for The Orchards, as in effect or amended from time to time (herein referred to as the "Declaration"), from its membership and to expend the proceeds of such assessments and charges for such purposes of the Association as the Board deems necessary or desirable; and
2. To contract with others to provide such services and benefits to the membership that the Board determines to be necessary; and
3. To enforce by any and all lawful means, including by suit, any design or construction guidelines established pursuant to the Bylaws of the Association or the Declaration by the Class B Member, the Architectural Review Board (the "ARB") or the Board; and
4. To make, establish and enforce reasonable rules and regulations governing the use of property owned by the Association, including any improvements and amenities thereon; and
5. To maintain, repair, replace and operate those properties that the Association has the duty or right to maintain, repair, replace and operate under these Articles, the Bylaws, the Declaration or otherwise; and
6. To contract for the management of property owned or operated by the Association and to delegate to such contractors all or any part of the powers and duties of the Association; and
7. To employ personnel to perform the services required or authorized under these Articles or the Bylaws of the Association or under the Declaration; and
8. To purchase insurance on property owned by the Association or insurance for the protection of the Association, the Board of Directors or the members of the ARB; and
9. To replace personal property and to reconstruct improvements constructed on property owned by the Association after casualty or other loss; and
10. To insure any and all real property, personal property or improvements now owned or hereafter acquired by the Association; and
11. To make additional improvements on and to property owned by the Association; and
12. To acquire and enter into agreements whereby it acquires leaseholds, memberships, easements or other possessory or use interests in lands or facilities including, but not limited to, recreational facilities, whether or not located contiguous to property owned by the Association; and

13. To enforce by legal action any and all provisions of these Articles or of the Bylaws.

Nothing herein shall require, or be construed to require, the Association to exercise any or all of its purposes, powers, rights or objects provided hereunder; it is specifically hereby provided that the right to exercise or engage in any or all of the objects, purposes or powers granted hereunder shall be subject to the absolute discretion of the Association's Board of Directors.

ARTICLE IV **INCORPORATOR**

The name and address of the incorporator of the Association is James E. Johnston, 4265 Lomac Street, Montgomery, AL 36106. The incorporator's authority is limited to the power to execute and deliver these Articles of Incorporation for filing with the Office of the Judge of Probate of Montgomery County, Alabama, for the purpose of incorporating this Association.

ARTICLE V **MEMBERSHIP**

The Association shall have members as determined in accordance with the Declaration and Bylaws of the Association, as each is amended, repealed or modified from time to time. The Association shall have the following two classes of members: Class A and Class B. The rights of members, including their right to vote, and the qualifications for each class of membership are as set forth in the Declaration and in the Bylaws of the Association, as the same may be amended or modified from time to time. However, in no event shall any member of the Association, as such, be liable for or subject to the debts, liabilities or obligations of the Association. Except as provided in the Bylaws, as the same are amended, repealed or modified from time to time, the membership interests in the Association cannot be sold, transferred, assigned, or hypothecated in any manner, except as an appurtenance of the lot to which the member holds fee simple title.

ARTICLE VI
BOARD OF DIRECTORS

- A. In General. The corporate powers, business and affairs of the Association shall be managed under the direction of the Board of Directors. The number of directors comprising the Board of Directors shall be not less than three (3) individuals. Subject to such limitation, and except for the number of the members on the initial Board, the number of directors shall be fixed by or in the manner provided in the Declaration and Bylaws of the Association. All officers and directors shall hold office for such terms as are set forth in the Bylaws; provided, however, that any director elected or appointed by the Board of Directors or by the members may be removed from office at any time, in the manner provided for herein, in the Declaration and in the Bylaws of the Association.
- B. Initial Directors. The names and addresses of the four (4) initial directors who are to act in the capacity of directors until the election of their successors, in accordance with the Bylaws, are:

<u>NAME</u>	<u>ADDRESS</u>
Harold Jacks Newell	13266 US Highway 31 Pike Road, AL 36064
Christopher Lee Newell	13266 US Highway 31 Pike Road, AL 36064
Edwin Lee Newell	13266 US Highway 31 Pike Road, AL 36064
Trent Smith Newell	13266 US Highway 31 Pike Road, AL 36064

- C. Board Powers. The Board of Directors shall have all rights, powers and authorities conferred by statute to manage the business and affairs of the Association and shall have such

powers, rights and authorities as are otherwise granted to them in the Bylaws of the Association or in the Declaration.

- D. Liability and Indemnification. The directors, officers, employees and members of the Association shall not, as such, be liable for the obligations of the Association. The liability and indemnification of a director, officer, employee or member of the Association (including an individual serving on the ARB) shall be as set forth in the Bylaws of the Association or as set forth in the Declaration.

The Association shall have the 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 on the ARB or as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, limited liability company, trust or other enterprise against any liability asserted against such person and incurred by such person in such capacity or arising out of such person's status as such, whether or not the corporation would have the power to indemnify such person against such liability.

- E. Removal of Directors. On or before the Class B Member Termination Date (as defined in the Declaration of the Association), a director may be removed with or without cause from office only by the Class B Member (as defined in the Declaration of the Association). After the Class B Member Termination Date, a director may be removed with or without cause from office only by the affirmative vote of the Members representing a majority of the votes of the members taken at a regular membership meeting or at a special membership meeting called for the purpose of removing the director unless a greater vote is required by the Act in which case such greater vote will be required. A director shall be removed effective at the time such

director is provided with a written notice of removal unless a later date is specified in the written notice of removal.

ARTICLE VII BYLAWS

The initial Bylaws of the Association shall be adopted by the Board of Directors and may only be altered, modified, amended, or rescinded in the manner provided in the Bylaws.

ARTICLE VIII DURATION

This Association shall exist and operate perpetually until otherwise terminated in accordance with the Alabama Nonprofit Corporation Act, as amended.

ARTICLE IX AMENDMENTS

Amendments to these Articles of Incorporation may be made only with the approval of the Class B Member on or before the Class B Member Termination Date (as defined in the Declaration) and, after the Class B Member Termination Date, any amendment to these Articles of Incorporation shall be made only with the approval of members representing at least sixty-seven percent (67%) of the total votes of the members of the Association then entitled to be cast on such amendment.

ARTICLE X DISSOLUTION

The Association may be dissolved only after the adoption of a resolution of the Board of Directors recommending such dissolution and only with the approval of the Class B Member until and

including the Class B Member Termination Date and for dissolution after the Class B Member Termination Date, only with the approval of members representing not less than sixty-seven percent (67%) of the votes then entitled to be cast on the dissolution. Upon dissolution of the Association, other than as incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate governmental agency or public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is not accepted, such assets shall be granted, conveyed, and assigned to any nonprofit corporation, association, trust, or other organization devoted to such similar purposes.

IN WITNESS WHEREOF, the undersigned has hereunto caused its hand to be set on this
10th day of March, 2015.

INCORPORATOR:


James E. Johnston

This instrument prepared by:
James E. Johnston, Esq.
James E. Johnston, LLC
4265 Lomac Street
Montgomery, AL 36106
334.215.7596

John H. Merrill
Secretary of State

P.O. Box 5616
Montgomery, AL 36103-5616

STATE OF ALABAMA

I, John H. Merrill, Secretary of State of Alabama, having custody of the Great and Principal Seal of said State, do hereby certify that

pursuant to the provisions of Title 10A, Chapter 1, Article 5, Code of Alabama 1975, and upon an examination of the entity records on file in this office, the following entity name is reserved as available:

The Orchards Homeowners Association, Inc.

This name reservation is for the exclusive use of James E. Johnston, 4265 Lomac Street, Montgomery, AL 36106 for a period of one year beginning March 31, 2015 and expiring March 31, 2016

In Testimony Whereof, I have hereunto set my hand and affixed the Great Seal of the State, at the Capitol, in the city of Montgomery, on this day.



March 31, 2015

Date

J. H. Merrill

RES685617

John H. Merrill

Secretary of State



STATE OF ALA.MONTGOMERY CO.
I CERTIFY THIS INSTRUMENT WAS FILED ON
CORP 00334 PG 0459-0467 2015 Apr 14 10:58AM
STEVEN L. REED
JUDGE OF PROBATE

INDEX
REC FEE
CERT
CHECK TOTAL
238101

\$5.00
\$50.00
\$0.00
\$55.00

Clerk: #101 11:12AM