

OCT 06 2004

Corporations Section

**ARTICLES OF INCORPORATION  
OF  
TERRACE BROOK HOMEOWNER ASSOCIATION, INC.**

The undersigned natural person of the age of eighteen (18) years or more, a citizen of the State of Texas, acting as the incorporator of a corporation under the Texas Non-Profit Corporation Act, hereby adopts the following Articles of Incorporation for such Corporation:

**ARTICLE I.**

The name of the corporation is Terrace Brook Homeowner Association, Inc. (hereinafter referred to as the "Association").

**ARTICLE II.**

The Corporation is a non-profit corporation.

**ARTICLE III.**

The period of the Corporation's duration is perpetual.

**ARTICLE IV.**

Reference is hereby made to that certain Declaration of Covenants, Conditions and Restrictions for Terrace Brook, duly recorded under Clerk's File No. X941667, in the Official Public Records of Real Property of Harris County, Texas (as amended from time to time, the "Declaration"). All terms defined in the Declaration are used herein with the same meaning, unless otherwise defined herein. The Association does not contemplate pecuniary gain or profit to its Members. The purpose or purposes for which the Association is formed are: (a) to provide for the preservation of the values and amenities and the maintenance of the common improvements of the Terrace Brook single family residential project, being the land more fully described in the Declaration and subdivided as one or more sections of Terrace Brook, a subdivision in Harris County, Texas, according to the maps or plats thereof recorded in the Map Records of Harris County, Texas, and any and all other property that is accepted by the Association in accordance with the terms of the Declaration (collectively, the "Property"); (b) to exercise the powers of (i) maintaining, administering and using the Common Areas and such other common areas and facilities (collectively, the "Common Properties"), (ii) administering and enforcing the covenants, conditions and restrictions affecting the Property and set forth in the Declaration, and (iii) collecting and disbursing the assessments and charges imposed, or to be imposed, upon the Property, all as more fully described in the Declaration; (c) to promote the common health, and welfare of the Members of the Association; and (d) to perform the actions of the Association that are required or permitted by these Articles of Incorporation of the Association, the Bylaws, and the Declaration. In fulfilling these purposes, the Association shall do the following:

- A. Exercise all of the powers and privileges and perform all of the duties set forth in the Declaration as may be amended from time to time, the Declaration being incorporated herein as if fully set forth (but subject to any limitations as may be contained in the Declaration);
- B. Operate without profit for the sole and exclusive benefit of its Members; and

C. Have and exercise any and all powers, rights and privileges that may now or hereafter be exercised by a corporation organized under the Non-Profit Corporation Act of the State of Texas.

#### ARTICLE V.

The street address of the initial registered office of the Association is 1601 Elm Street, Suite 300, Dallas, Texas 75201, and the name of its initial registered agent at such address is Stephen L. Brown.

#### ARTICLE VI.

The affairs of the Association shall be managed by the Board of Directors. The number of Directors of the Association shall be fixed by the Bylaws of the Association but shall not be less than three (3). The number of Directors constituting the initial Board of Directors of the Association is three (3), and the names and addresses of the persons who are to serve as the initial Directors are as follows:

<b>Name</b>	<b>Address</b>
Stephen L. Brown	1601 Elm Street, Suite 300 Dallas, Texas 75201
Keith D. Martin	1601 Elm Street, Suite 300 Dallas, Texas 75201
James S. Cornelius	1601 Elm Street, Suite 300 Dallas, Texas 75201

#### ARTICLE VII.

The Association shall indemnify any person who was, is, or is threatened to be made a named defendant or respondent in a proceeding (as hereinafter defined) because the person (i) is or was a Director or officer of the Association or (ii) while a Director or officer of the Association, is or was serving at the request of the Association as a trustee, officer, partner, venturer, proprietor, Director, employee, agent, or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan, or other enterprise, to the fullest extent that a corporation may grant indemnification to a Director under the Texas Non-Profit Association Act, as the same exists or may hereafter be amended. Such right shall be a contract right and shall include the right to be paid by the Association expenses incurred in defending any such proceeding in advance of its final disposition to the maximum extent permitted under the Texas Non-Profit Association Act, as the same exists or may hereafter be amended. If a claim for indemnification or advancement of expenses hereunder is not paid in full by the Association within ninety (90) days after a written claim has been received by the Association, the claimant may at any time thereafter bring suit against the Association to recover the unpaid amount of the claim, and if successful in whole or in part, the claimant shall be entitled to be paid also the expenses of prosecuting such claim. It shall be a defense to any such action that such indemnification or advancement of costs of defense are not permitted under the Texas Non-Profit Association Act, but the burden of proving such defense shall be on the Association. Neither the failure of the Association (including its Board of Directors or any committee thereof, special legal counsel, or members, if any) to have made its determination prior to the commencement of such action that indemnification of, or advancement of costs of defense to, the claimant is permissible in the circumstances nor an actual determination by the Association (including its Board of Directors or any committee thereof, special legal counsel, or members, if any) that such indemnification or advancement is not permissible shall be a defense to the action or create a presumption that such indemnification or advancement is not permissible. In

the event of the death of any person having a right of indemnification under the foregoing provisions, such right shall inure to the benefit of that person's heirs, executors, administrators, and personal representatives. The rights conferred above shall not be exclusive of any other right which any person may have or hereafter acquire under any statute, bylaw, resolution of members, if any, or Directors, agreement, or otherwise. To the extent permitted by then applicable law, the grant of mandatory indemnification to any person pursuant to this Article shall extend to proceedings involving the negligence of such persons. The Association may additionally indemnify any person covered by the grant of mandatory indemnification contained above to such further extent as is permitted by law and may indemnify any other person to the fullest extent permitted by law.

The Association may purchase and maintain insurance on behalf of any person who is serving the Association (or another entity at the request of the Association) against any liability asserted against him and incurred by him in such a capacity or arising out of his status as such a person, whether or not the Association would have the power to indemnify him against that liability under this Article or by statute. Notwithstanding the foregoing, no person shall be indemnified pursuant to the provisions of this Article and no insurance may be maintained on behalf of any person if such indemnification or maintenance of insurance would subject the Association or such person to income or excise tax under the Internal Revenue Code of the United States as in effect from time to time (the "Code"), including any tax asserted under Chapter 42 of the Code. As used herein, the term "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitral, or investigative, any appeal in such an action, suit, or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding.

#### ARTICLE VIII.

To the fullest extent permitted by applicable law, no Director of the Association shall be liable to the Association for monetary damages for an act or omission in such Director's capacity as a Director of the Association, except that this paragraph shall not eliminate or limit the liability of a Director of the Association to the extent the Director is found liable for any of the following:

- A. A breach of such Director's duty of loyalty to the Association;
- B. An act or omission not in good faith that constitutes a breach of duty of the Director to the Association, or an act or omission that involves intentional misconduct or a knowing violation of the law;
- C. A transaction from which such Director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of such Director's office; or
- D. An act or omission for which the liability of such Director is expressly provided for by statute.

Any repeal or amendment of this Article by the Association shall be prospective only, and shall not adversely affect any limitation on the personal liability of a Director of the Association existing at the time of such repeal or amendment. In addition to the circumstances in which a Director of the Association is not personally liable as set forth in the foregoing provisions, a Director shall not be liable to the Association to such further extent as permitted by any applicable law hereafter enacted, including without limitation, any subsequent amendments of the Texas Miscellaneous Association Laws Act or the Texas Non-Profit Association Act.

#### ARTICLE IX.

The Board of Directors shall adopt Bylaws consistent with these Articles of Incorporation and the Declaration. Thereafter, the Bylaws may be amended (including the repeal of the Bylaws accompanied by the adoption of new Bylaws) in any manner set forth in the Declaration, or, if no provision for amendment is made

in the Declaration, then at any annual or special meeting of the Members at which a quorum is present, by a vote of the Members holding a majority of the eligible votes of all Members (regardless of class) that are present in person or by proxy at that meeting (provided that the Declarant, or each Declarant if there are more than one, must consent thereto if such amendment is to be effective at a time when Declarant owns at least one Lot). To the extent that this provision (x) requires that a greater number of votes of Members be cast for the adoption of an amendment to the Bylaws than would otherwise be required under the Texas Non-Profit Corporation Act or other law or (y) permits the Bylaws to be amended by the casting of a lesser number of votes of Members than would otherwise be permitted under the Texas Non-Profit Corporation Act or other law, this provision is intended to, and shall operate to, limit, enlarge or deny (as is applicable) voting rights of certain classes of Members.

#### **ARTICLE X.**

The Association is a non-profit corporation, without capital stock, organized solely for the purposes specified in Article IV; and no part of the Association's property, whether income or principal, shall ever inure to the benefit of, or be distributable to, any Director, officer or employee of the Association, or of any individual having a personal or private interest in the activities of the Association, nor shall any such Director, officer, employee, or individual receive or be lawfully entitled to receive any profit from the operations of the Association, except a reasonable allowance for salaries or other compensation for personal services actually rendered in carrying out one or more of its stated purposes.

Upon dissolution of the Association, other than incident to a merger or consolidation, any assets required to be distributed pursuant to the terms of §6.02A(1), (2) or (3) of the Texas Non-Profit Corporation Act, as amended, shall be so distributed, and any excess assessments collected by the Corporation shall be rebated to the Members to the extent that such rebate by a "homeowner's association" is permitted by Section 528 of the Internal Revenue Code and in the manner determined by the Board of Directors to most fairly take into account the amount and nature of assessments paid to the Association with respect to each Lot comprising the Property from among the manners of distribution permitted in the case of a homeowner's association qualifying under Section 528 of the Internal Revenue Code.

#### **ARTICLE XI.**

These Articles may be amended in any manner set forth in the Declaration, or, if no provision for amendment is made in the Declaration, then at any annual or special meeting of the Members at which a quorum is present, by a vote of the Members holding a majority of the eligible votes of all Members (regardless of class) that are present in person or by proxy at that meeting (provided that the Declarant, or each Declarant if there are more than one, must consent thereto if such amendment is to be effective at a time when Declarant owns at least one Lot). To the extent that this provision (x) requires that a greater number of votes of Members be cast for the adoption of an amendment to these Articles than would otherwise be required under the Texas Non-Profit Corporation Act or other law, (y) permits these Articles to be amended by the casting of a lesser number of votes of Members than would otherwise be permitted under the Texas Non-Profit Corporation Act or other law or (z) permits these Articles to be amended without a resolution of the Board of Directors, this provision is intended to, and shall operate to, limit, enlarge or deny (as is applicable) voting rights of certain classes of Members and limit the authority of the Board of Directors.

#### **ARTICLE XII.**

Any action required by the Texas Non-Profit Corporation Act to be taken at a meeting of the members or directors of a corporation or any action that may be taken at a meeting of the Members or Directors or of any committee may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed

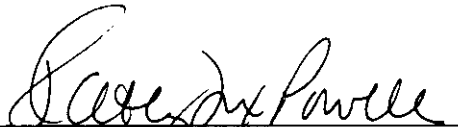
by a sufficient number of Members, Directors or committee members as would be necessary to take that action at a meeting at which all of the Members, Directors or committee members entitled to vote with respect to the subject matter thereof were present and voted.

**ARTICLE XIII.**

The name and address of the incorporator is:

<b>Name</b>	<b>Address</b>
Kathy Fox Powell	1601 Elm Street, Suite 300 Dallas, Texas 75201

IN WITNESS WHEREOF, I have hereunto set my hand this 5<sup>th</sup> day of October, 2004.

  
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Kathy Fox Powell