

# Delaware

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The First State

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "THE WOODS AT HIDDEN CREEK HOMEOWNERS ASSOCIATION", FILED IN THIS OFFICE ON THE THIRTY-FIRST DAY OF MAY, A.D. 2022, AT 10:52 O`CLOCK A.M.*



  
Jeffrey W. Bullock, Secretary of State

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Date: 06-06-22

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**CERTIFICATE OF INCORPORATION**

**OF**

**THE WOODS AT HIDDEN CREEK HOMEOWNERS ASSOCIATION**

FIRST: The name of this Corporation is The Woods at Hidden Creek Homeowners Association (hereinafter referred to as the "Corporation").

SECOND: The address of the Corporation's registered agent in this State is c/o 5169 West Woodmill Drive, Suite 10, Wilmington, New Castle County, Delaware 19808. The registered agent shall be the corporation itself.

THIRD: The nature of the business of the Corporation is generally to provide for the maintenance of the common facilities and public open spaces at the subdivision now existing and as modified from time-to-time, situate in Town of Townsend, New Castle County, State of Delaware and known as The Woods at Hidden Creek (the "Subdivision"), as shown on that certain Record Major Subdivision Plan for The Woods at Hidden Creek, prepared by Karins and Associates, dated January 9, 2019 (the "Plan"), said Plan of record in the Office of the Recorder of Deeds in and for New Castle County, Delaware (the "Recorder's Office") in Instrument No. 20190924-0076319, containing two hundred twenty (220) single-family residential lots (individually referred to herein as a "Lot" and collectively as the "Lots") The maintenance of the stormwater management facilities, open spaces, and common facilities (as those terms are identified and/or defined in the Bylaws of the Corporation, the Declaration (as defined herein) or by the Plan) shall be in accordance with the applicable provisions of the Town of Townsend Code, the Plan, and pursuant to the provisions and requirements of that certain Declaration of Restrictions for The Woods at Hidden Creek, dated May 24, 2022 and of record in the Recorder's Office in Instrument No. 20220527-0056126, as it may be amended from time to time (the "Declaration").

FOURTH: The said Corporation shall not have the authority to issue capital stock.

FIFTH: The said Corporation is not a corporation organized for profit, and it shall have no capital stock. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Corporation shall be a member of the Corporation. This is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Corporation. Ownership of the Lot shall be the sole qualification for membership.

At all meetings of the Corporation, the owners of each Lot shall be entitled to cast such vote or votes as provided for in the Bylaws, which vote or votes may be cast in person or by proxy. The Corporation shall have one class of voting membership, Class A. Class A members shall be all owners of subdivided Lots and any other person or entity which acquires title to all or a substantial portion of the Subdivision for the purpose

of developing thereon a residential community. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. When more than one person holds such interest or interests in any Lot all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event more than one total vote shall be cast with respect to any such Lot.

At the regular annual meeting of the Corporation, the Board of Directors shall levy an annual assessment for the benefit of the Corporation, in an amount set by a majority of the Corporation's members in good standing pursuant to the terms of the Declaration, upon the then-current property owners of each Lot. Said assessment shall be equally apportioned as between each Lot, and shall be payable annually in advance on the due date of each year established by the Board of Directors. Said assessment shall be subject to such discounts, if any, as the Board of Directors may fix from time to time. Said assessment shall, when due, become a lien on the Lot or Lots against which the assessment is made, subject and subordinate to the lien of any mortgage or mortgages of record against such Lot or Lots. If such assessment is not paid within thirty (30) days after the due date, it shall bear interest from the date of delinquency at the legal rate of interest then in effect, and may be recovered, together with costs and reasonable attorneys fees required therefor, by appropriate execution upon, and sale of, said Lot by the Corporation through its attorney, subject in lien to any recorded mortgage or mortgages. Notwithstanding the foregoing, the Board of Directors at any duly noticed meeting of the Board or of the Corporation may elect to make the assessment payable semi-annually, quarterly, or monthly. The Board of Directors may also elect to levy special assessments pursuant to the relevant provisions in the Bylaws.

Nothing herein shall be regarded as imposing on the members personal liability to the Corporation's creditors. Nothing herein shall authorize the Corporation to make levies or assessments or create mortgages or other liens upon the stormwater management facilities, open spaces and active recreational facilities, or to convey the stormwater management facilities, open spaces and active recreational facilities, or any part thereof, except for a proper corporate purpose as set forth in this Certificate and unless such action has been authorized and approved by a three-quarters (3/4) vote of all members of the Corporation, in accordance with the provisions of the Bylaws of the Corporation.

To the extent the Board of Directors of the Corporation does not specifically perform the covenants of the Corporation under the Plan and the Declaration, the individual Lot owners are specifically empowered to enforce those covenants in order to carry out the purpose of the Corporation.

SIXTH: The name and mailing address of the Incorporator is as follows:

John E. Tracey, Esquire  
Young Conaway Stargatt & Taylor, LLP  
1000 N. King Street  
P.O. Box 391  
Wilmington, Delaware 19899-0391

SEVENTH: The powers of said Incorporator shall terminate upon the filing of this Certificate of Incorporation. The business and affairs of the Corporation shall be carried on by a Board of Directors. With the exception of the initial Board of Directors, which shall consist of one (1) member appointed by the developer of the Community, the Board of Directors shall consist of three (3) or more members, not to exceed five (5) members. The terms of the Directors may be fixed by the Bylaws, as therein provided. Any vacancy occurring in the Board may be filled by a majority of the remaining members of the Board until the next annual meeting of the members. The Board of Directors shall have the power to elect a President, one or more Vice-Presidents, a Secretary, a Treasurer, and such other officers as may be deemed desirable.

Until such time as successors are elected and qualified, the following persons are to serve as the Directors of the Corporation, with a mailing address as set forth opposite his name below:

1. Rob Allen  
5169 W. Woodmill Drive  
Suite 10  
Wilmington, DE 19808

The Corporation shall have the power to acquire by purchase, devise or donation, or in any other manner, and to dispose of, any property, or property rights, real or personal, and to enter into and perform any and all contracts and to mortgage, pledge, restrict the use of, or otherwise encumber any of its property, and to draw, make, endorse and accept promissory notes and bills of exchange, provided that any such action by the Corporation shall be for the purpose of carrying out the objects for which it is incorporated, and provided that any such action is consistent with the foregoing provisions and the provisions of the Plan and the Declaration. Excluding any mortgages and liens currently on the common areas or other areas within the Subdivision that are the obligation of the developer of the Subdivision, the Corporation, notwithstanding the above, shall have no power to mortgage or convey, or make levies or assessments upon, common areas of the Subdivision owned by the Corporation without the approval of at least three-quarters (3/4) of the members of the Corporation.

EIGHTH: The Corporation shall be considered a "civic organization" as defined in 16 *Del.C.* §6840 *et seq* and is subject to the following provisions:

- (i) The Corporation is not organized for profit;
- (ii) No part of the net earnings of the Corporation shall inure to the benefit of any private shareholder, member or individual; and

(iii) Upon liquidation or dissolution of the Corporation, or abandonment by the Corporation, none of the assets of the Corporation nor benefits from its property will inure to the benefit of any person or organization except a community chest, public or nonprofit, foundation, government, governmental agency, civic organization, maintenance corporation or other nonprofit organization.

NINTH: A Director should not be personally liable for monetary damages for a breach of a fiduciary duty as a director unless: (i) such breach constitutes a breach of the duty of loyalty to the Corporation or its members; (ii) the act or omission was not in good faith or otherwise involved intentional misconduct or a knowing violation of law; or (iii) for any transaction from which the Director derived an improper personal benefit. A Director shall not be liable for a breach of the duty of loyalty for a self-interested transaction if the provisions of 8 *Del. C.* §144 are satisfied.

TENTH: If employees or agents of Town of Townsend enter upon property that is owned or titled under the name The Woods at Hidden Creek Homeowners Association for the purpose of bringing such property into compliance with the Town of Townsend Code or State or federal law, members of the Corporation shall be personally liable for debts of the Corporation caused by such corrective action and assessed against said Corporation.

ELEVENTH: This Certificate of Incorporation may not be amended except with the approval of at least three-quarters (3/4) of all members of the Corporation. The power to make, alter or repeal Bylaws shall be in the members of the Corporation as provided in the Bylaws.

TWELTH: The election of the Directors of the Corporation need not be by ballot unless the Bylaws of the Corporation shall so provide.

THIRTEENTH: The Board of Directors must bring all matters relating to membership fees and land use to all members of the Corporation for voting thereon.

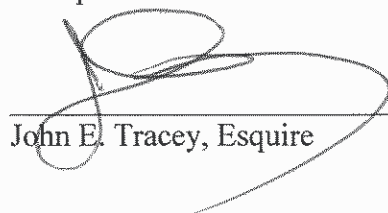
FOURTEENTH: The Corporation shall exist perpetually.

**THE UNDERSIGNED**, being the Incorporator for the purpose of forming a corporation in accordance with 8 *Del.C.* §103, entitled "General Corporation Law", and the acts amendatory and supplemental thereto, if any, makes and files this Certificate of Incorporation, hereby declaring and ratifying that the facts herein are true, and accordingly, has set his hand and seal the 31<sup>st</sup> day of May, 2022.

In the Presence of:

Incorporator:

  
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John E. Tracey, Esquire