

ARTICLES OF INCORPORATION

NONPROFIT

OF

AGATE CREEK PRESERVE HOMEOWNERS ASSOCIATION

VICTORIA BUCKLEY
COLORADO SECRETARY OF STATE

The undersigned, acting as incorporator of a nonprofit corporation under the Colorado Revised Nonprofit Corporation Act, hereby adopts the following Articles of Incorporation:

**ARTICLE 1
NAME**

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SECRETARY OF STATE
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The name of the nonprofit corporation is Agate Creek Preserve Homeowners Association (the "Association").

**ARTICLE 2
PERIOD OF DURATION**

The Association shall exist in perpetuity from and after the date of filing of these Articles of Incorporation with the Secretary of State of the State of Colorado, unless dissolved according to Colorado law.

**ARTICLE 3
PURPOSES OF THE ASSOCIATION**

The Association is organized exclusively for the purpose of constituting the Association named in the Declaration of Covenants, Conditions, Restrictions and Easements for Agate Creek Preserve (the "Subdivision") in Routt County, Colorado, in accordance with the Colorado Common Interest Ownership Act, C.R.S. 38-33.3-101 et. seq. (the "Act"), and the Colorado Revised Nonprofit Corporation Act, C.R.S. 7-121-101 et. seq. (the "Nonprofit Corporation Act"), as either may be amended from time to time. The purposes of the Association shall be:

1. To provide for the supervision, management, administration, operation, care, upkeep, repair and maintenance of the Roads, the Water System, the Common Area and any and all real and personal property owned by the Association in the Subdivision;
2. To enforce the provisions of the Declaration, as amended from time to time, these Articles of Incorporation, the Bylaws and Rules and Regulations of the Association;
3. To provide for the furtherance of the interests of all the Owners of the Lots in the Subdivision with the objective of establishing and maintaining the Subdivision as one of the highest

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possible quality and value, and enhancing and protecting its value, desirability and attractiveness;

4. To promote the general health, safety and welfare of the Owners of Lots in the Subdivision. Terms used in these Articles shall have the same meanings as defined in the Declaration and the Act.

5. No part of the net earnings of the Association shall inure to the benefit of or be distributable to the members, managers, or officers of the Association, or other private persons, except that the Association shall be authorized and empowered to pay reasonable compensation for services rendered to it and to make payments and distributions in furtherance of the purposes set forth herein. The Association does not contemplate pecuniary gain or profit to the members of the Association and is organized for nonprofit purposes.

**ARTICLE 4
POWERS**

In furtherance of its purposes, the corporation shall have all of the powers conferred upon nonprofit corporations as provided in the Nonprofit Corporation Act and upon associations as provided in the Act in effect from time to time, including all of the powers necessary or desirable to perform the obligations and duties, and to exercise the rights and powers of the corporation under the Declaration which will include, but shall not be limited to, the following:

1. To make and to collect assessments against members of the Association for the purposes of payment of the Common Expenses (including the expenses incurred in exercising its powers of performing its functions);

2. To manage, control, operate, maintain, repair and improve the Common Area;

3. To enforce the terms, covenants, restrictions, conditions, uses, limitations and obligations set forth under the Declaration and Bylaws, and to make and enforce rules as provided herein.

4. To engage in activities which, will actively foster, promote and advance the interests of all of the Owners of Lots, including the interests of the Declarant during development of the Subdivision and his ownership of any Lots.

**ARTICLE 5
LIMITATION OF LIABILITY**

No director of the Association shall have any liability to the Association or to its members for monetary damages for breach of fiduciary duty as a director, except to the extent such exemption from liability is not permitted under the Nonprofit Corporation Act. Any repeal or modification of the foregoing sentence shall not adversely affect any right or protection of a director in respect of any

act or omission occurring prior to such repeal or modification.

ARTICLE 6 INDEMNIFICATION

The Association shall provide indemnification either directly or indirectly through insurance policies or otherwise, to the fullest extent permitted by law, for any individual who serves as a director, officer, employee or agent of the Association, or who serves at the request of the Association as a director, officer, partner, trustee, employee, or agent of any other foreign or domestic corporation or of any partnership, joint venture, trust, other enterprise or employee benefit plan, against liabilities and expenses such individual incurs in connection with holding such position.

Whenever such an individual seeks indemnification by the Association against any liability or expenses incurred in any threatened, pending or completed proceeding in which the individual is a party because he or she holds or has held any such position, the Association shall proceed diligently and in good faith to make a determination, in the manner permitted in the Nonprofit Corporation Act, whether indemnification is permissible in the circumstances. If indemnification is determined to be permissible, the Association shall indemnify the individual to the fullest extent permissible, provided that any indemnification for expenses shall be limited to the amount found reasonable by an evaluation conducted in a manner permitted by the Nonprofit Corporation Act.

This article shall not be interpreted to limit in any manner any indemnification the Association may be required to pay pursuant to the Nonprofit Corporation Act, any court order, or any contract, resolution or other commitment which is legally valid.

ARTICLE 7 REGISTERED OFFICE AND REGISTERED AGENT

The initial registered office of the Association shall be at 141 - 9th Street, P.O. Box 5106, Steamboat Springs, Colorado 80477. The initial agent at such office shall be Bruce L. Jarchow. The principal office is located at 141 - 9th Street, P.O. 5106, Steamboat Springs, Colorado 80477. ✓

ARTICLE 8 EXECUTIVE BOARD

The control and management of the affairs of the Association and the disposition of its funds and property shall be vested in the directors. All of the directors shall constitute the Executive Board. The number of directors shall be not less than one nor more than three, as may be set by the Bylaws from time to time in effect, and each director shall serve for a term of one year to three years, as may be set by the Bylaws from time to time in effect and until his or her successor shall be duly elected and shall qualify. The initial Executive Board shall consist of two (2) directors, and the names and address of such initial directors, to serve until the first annual meeting of the Association and until their successors shall be duly elected and qualified, are as follows:

1. Ed Trousil
P.O. Box 776290
Steamboat Springs, CO 80477
2. Cheryl B. Trousil
P.O. Box 776290
Steamboat Springs, CO 80477

Pursuant to the Act, as amended, not later than 60 days after conveyance of 25% of the Lots created by the Plat to Owners other than Declarant, at least one director, and not less than 25% of the members of the Executive Board, shall be elected by Owners other than Declarant. Not later than 60 days after conveyance of 50% of the Lots created by the Plat to Lot Owners other than Declarant, not less than one-third of the members of the Executive Board must be elected by Lot Owners other than Declarant. Cumulative voting shall not be allowed in the election of directors or for any other purpose.

ARTICLE 9 MEMBERS

Any person or combination of Persons owning an undivided fee simple interest in a Lot in the Subdivision (including Declarant as respects Lots from time to time owned by Declarant) shall automatically be a member of the Association and such membership shall be continuous throughout the period that such ownership continues. The Association shall have one class of members of the Association, being Owners who own fee simple interests in Lots 1 through 16 in the Subdivision. Each of said sixteen Lots shall be allocated one (1) vote on all matters to be voted on by the Members of the Association. The Owners of the Remainder Parcels and the Owners of Lot 17 and 18 shall not be members by reason of such ownership.

ARTICLE 10 DISTRIBUTION OF ASSETS UPON DISSOLUTION

Upon dissolution of the Association, the Executive Board shall provide for the distribution of all assets and liabilities of the Association in the following manner:

1. All liabilities and obligations of the Association shall be paid and discharged or adequate provisions shall be made therefor.
2. Assets held by the Association on condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirement.
3. Assets received and held by the Association, subject to the limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not

held upon a condition requiring return, transfer, or conveyance by reason of the dissolution shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities similar to those of this corporation, in accordance with a plan of distribution adopted pursuant to the Nonprofit Corporation Act which is not inconsistent with these Articles of Incorporation.

4. Assets received and held by the Association not subject to liabilities, conditions or use limitations, as specified in paragraphs 1, 2 and 3 above, shall be distributed to the Owners of Units pro rata according to their ownership interests as specified in the Declaration.

5. Any remaining assets may be distributed to such persons, societies, organizations, governmental entities, political subdivisions, or domestic or foreign corporations, whether for profit or nonprofit, as may be specified in a plan of distribution adopted pursuant to the Nonprofit Corporation Act and which is not inconsistent with these Articles of Incorporation.

ARTICLE 11 AMENDMENT

Amendment to these Articles shall require the written consent or affirmative vote of at least 51% of the members of the Association, except where a higher voting requirement is imposed by law, or the Declaration.

ARTICLE 12 INCORPORATOR

The name of the incorporator is Bruce L. Jarchow, whose address is P.O. Box 5106, Steamboat Springs, Colorado 80477. ✓

Dated this 28th day of April, 1999

STATE OF COLORADO)
) ss.
COUNTY OF ROUTT)

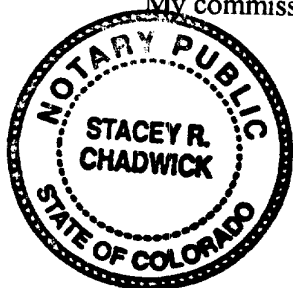
Bruce L. Jarchow ✓
Bruce L. Jarchow - Incorporator

The foregoing instrument was acknowledged before me this 28th day of April, 1999 by Bruce L. Jarchow.

Witness my hand and official seal.

My commission expires: 7-14-2001

Stacey R. Chadwick
Notary Public

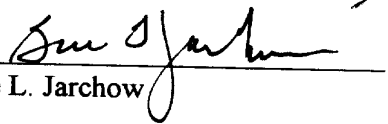


My Commission Expires July 14, 2001

Separate Acceptance

With the execution of this document, the undersigned hereby assents to the undersigned's appointment as initial registered agent of Agate Creek Preserve Homeowners Association, as set forth in the Articles of Incorporation of Agate Creek Preserve Homeowners Association.

Signed this 28th day of April, 1999.



Bruce L. Jarchow

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