

**ARTICLES OF INCORPORATION  
OF  
CHERRY CREEK CROSSING PROPERTY  
OWNERS ASSOCIATION, INC.**

FILED CUSTOMER COPY  
VICTORIA BUCKLEY  
COLORADO SECRETARY OF STATE

The undersigned person acting as Incorporator under the Colorado Revised Nonprofit Corporation Act, hereby signs and acknowledges the following Articles of Incorporation for the following Corporation:

**ARTICLE I**

Name

The name of this Corporation is Cherry Creek Crossing Property Owners Association, Inc. (hereinafter called the "Association").

**ARTICLE II**

Duration

The term of existence of this Corporation is perpetual.

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**ARTICLE III**

Purposes

The business, objects and purposes for which the Association is formed include the following:

1. To be and constitute the Association to which reference is made in the Declaration of Conditions, Covenants, Restrictions and Easements for Cherry Creek Crossing and any amendment or supplement thereto (hereinafter called the "Declaration" and the definitions and provisions thereof are incorporated herein by this reference as if set forth at length) which has been or will be recorded in the records of the Clerk and Recorder of the County of El Paso, Colorado, and to perform all obligations and duties of the Association and to exercise all rights and powers of the Association under the Declaration. The Declaration consists of beneficial property restrictions which are mutually enforceable by all Owners within the real property made subject to the Declaration or annexed thereto (hereinafter called the "Association Area").

2. To provide an entity for the furtherance of the interests of all of the Owners, including the Declarant named in the Declaration, with the objectives of establishing and maintaining the Association Area as a project of quality and value; enhancing and protecting its value, desirability and attractiveness; promoting the welfare of the residents of said Association Area and providing for the

maintenance, preservation and architectural control of the Lots within said Association Area. As provided in C.R.S. 38-33.3-116, the Association and the Association Area shall not be subject to the provisions of the Colorado Common Interest Ownership Act, except C.R.S. 38-33.3-105, 106 and 107.

## ARTICLE IV

### Powers

In furtherance of its purposes, this Association shall have all of the powers conferred upon non-profit corporations by the statutes and common law of the State of Colorado in effect from time to time, and shall have all of the powers necessary or desirable to perform the obligations and duties and exercise the rights and powers of the Association under the Declaration which shall include, but shall not be limited to, the following, which shall be subject to the limitations, requirements, restrictions and provisions of the Declaration:

- (a) To fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all other expenses incident to the conduct of the business of the Association, including without limitation all licenses, taxes or governmental charges levied or imposed against the Association or its property, provided however, assessments shall not exceed the limitations set forth in C.R.S. 38-33.3-116.
- (b) To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association (hereinafter called the "Association Property");
- (c) To borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its Association Property as security for money borrowed or debts incurred;
- (d) To participate in mergers, and consolidations with other non-profit corporations organized for the same purposes, and, subject to the Declarant's rights, to annex additional residential into the Association Area;
- (e) To manage, control, operate, maintain, repair and improve the Association Property;
- (f) To enforce the covenants, restrictions and conditions contained in the Declaration as provided therein;
- (g) To engage in activities which will actively foster, promote and advance the common interests of Owners of Lots, including the interest of the Declarant during its marketing of the Association Area;

(h) To enter into, make, perform or enforce contracts of every kind and description and to do all other acts necessary, appropriate or advisable in carrying out any purposes of this Association, with or in association with any person, firm, association, corporation or other entity or agency, public or private, subject to the requirements of the Declaration;

(i) To adopt, alter and amend or repeal such Bylaws as may be necessary or desirable for the proper management of the affairs of the Association.

## ARTICLE V

### Membership

1. This Association shall be a membership association without certificates or shares of stock. As more fully provided in the Declaration, every person or entity, who is a record owner of a fee or undivided fee interest in any Lot which is subject by the Declaration to assessment by the Association, including contract sellers, shall be a voting member of the Association, subject to the Declaration and the Association's Bylaws (the "Bylaws"). The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

2. A membership in this Association and the share of a Member in the assets of this Association shall not be assigned, encumbered or transferred in any manner except as appurtenant to the transfer of title to the Lot to which the membership pertains; provided, however, that the rights of membership may be assigned to the holder of a mortgage, deed of trust or other security instrument on a Lot as further security for a loan secured by a lien on such Lot.

3. A transfer of membership shall occur automatically upon the transfer of title to the Lot to which the membership pertains; provided however, that the Bylaws may contain reasonable provisions and requirements with respect to recording such transfers on the books and records of this Association.

4. Members shall have the right to purchase other Lots and to exercise the membership rights appurtenant thereto as provided in the Declaration.

5. This Association may suspend the voting rights of a Member for failure to comply with rules and regulations or the Bylaws of the Association or with any other obligations of the Owners of a Lot under the Declaration. Cumulative voting is prohibited.

6. The Bylaws may contain additional provisions setting forth the rights, privileges, duties and responsibilities of the Members; provided however, the provisions of these Articles of Incorporation and the Bylaws shall be subject to the covenants, terms and provisions of the Declaration which shall control in the event of any conflict, and the provisions of these Articles of Incorporation shall control over any conflicting provisions in the Bylaws.

## ARTICLE VI

### Voting Rights

There shall be Class A Members and a Class B Member, who shall have voting rights as follows:

Class A. Class A Members shall be all Members, with the exception of the Declarant, and there shall be one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant, and shall be entitled to three (3) votes for each Lot which it owns. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when ninety (90%) of the Lots permitted by the development plan filed with El Paso County have been conveyed by Declarant to residential purchasers and certificates of occupancy have been issued for residences constructed thereon;

(b) December 31, 2007; or

(c) when, in its discretion, the Class B member terminates its status by written notice to the Association.

## ARTICLE VII

### Board of Directors

1. The business and affairs of the Association shall be conducted, managed and controlled by a Board of Directors. The initial Board of Directors shall consist of two (2) Directors, and thereafter the specific number shall be set forth as provided in the Bylaws, but shall not exceed nine (9) Directors. The Declarant may, until ninety (90%) of the Lots permitted by the development plan filed with El Paso County have been conveyed by Declarant to residential purchasers and certificates of occupancy have been issued for residences constructed thereon, or December 31, 2007, whichever occurs earlier, appoint or remove any Director; the Declarant may relinquish this right by written notice to the Members who shall then meet to elect Directors to terms of one, two and three years, respectively.

2. The names and addresses of the members of the initial Board of Directors who shall serve until the first annual meeting as provided in the Bylaws and until their successors are duly elected and qualified are as follows:

NATHAN K. MILLER

6070 Camino Almonte  
Tucson, AZ 85718

LOIS J. KIMMINAU

9055 Calle Bogota  
Tucson, AZ 85715

3. Directors shall be elected, replaced and removed and vacancies of the Board of Directors shall be filled in the manner and for the terms as provided in the Declaration and Bylaws.

## ARTICLE VIII

### Officers

The Board of Directors may appoint a President, one or more Vice-Presidents, a Secretary, a Treasurer and such other officers as the Board believes will be in the best interest of the Association. The Officers shall have such duties as may be prescribed in the Bylaws and shall serve at the pleasure of the Board of Directors.

## ARTICLE IX

### Dissolution, Merger or Consolidation

The Association may be dissolved, merged or consolidated as provided by the Colorado Revised Nonprofit Corporation Act but subject to the Declaration. Upon dissolution of the Association *other than incident to a merger or consolidation, the assets of the Association shall be distributed and transferred as the Members may direct, subject to the requirements, limitations and other provisions of the Declaration. In such event, the assets may be granted, conveyed and assigned to any public agency, non-profit corporation, association, trust or other organization to be devoted to purposes similar to those for which this Association was created.*

## ARTICLE X

### Initial Registered Office and Agent

The street address of the initial registered office and address of the initial principal of the Association shall be 104 South Cascade Avenue, Suite 204, Colorado Springs, El Paso County, Colorado 80903. The initial registered agent shall be Lenard Rioth, whose address is the same as the

initial registered office and who hereby consents to appointment as the registered agent of the Association. The address of the Association's initial principal office is the same as the initial registered office.

## ARTICLE XI

### Amendment

1. Except as provided in Paragraph 2 of this Article XI, amendments to these Articles of Incorporation shall require the consent of at least two-thirds (2/3's) of the votes which Members, who are present in person or by proxy at a meeting, duly called and attended as provided by the Bylaws, are entitled to cast, provided, however, that no amendment to these Articles of Incorporation shall be contrary to or inconsistent with the provisions of the Declaration.

2. Notwithstanding any contrary provisions of these Articles of Incorporation or any other document, the Declarant hereby reserves the right, until ninety (90%) of the Lots permitted by the development plan filed with El Paso County have been conveyed by Declarant to residential purchasers and certificates of occupancy have been issued for residences constructed thereon, or December 31, 2007, whichever occurs earlier, but without approval or vote of the Members, to amend these Articles of Incorporation and/or the Bylaws, as may be necessary to correct typographical errors or make clarifications or as may be approved in writing by Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, or the Department of Veterans Affairs so as to induce any of such organizations to make, purchase, sell, insure or guarantee First Mortgages covering any portion of the Association Area, and each Owner by accepting a deed, mortgage or other instrument affecting a lot appoints Declarant as his attorney-in-fact for purposes of executing in said Owner's name and recording any such amendments to these Articles and each deed, mortgage, trust deed, other evidence of obligation or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of and a consent to the reservation of the power to the Declarant to make, execute and record any such amendments.

## ARTICLE XII

### Nonprofit Purposes

The Association is formed under the Colorado Revised Nonprofit Corporation Act and not for pecuniary profit or financial gain.

## ARTICLE XIII

### Incorporator

The Incorporator of the Association is Nathan K. Miller, whose address is 6070 Camino Almonte, Tuscon, Arizona 85718.

ARTICLE XIV

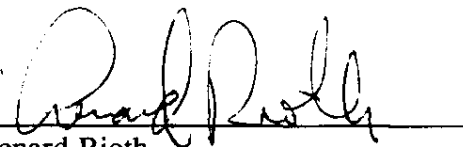
NONLIABILITY AND INDEMNITY OF OFFICERS AND DIRECTORS

Each Officer and Director of the Association, now or hereinafter serving in any such capacity, and the Declarant, its assigns and every committee member, shall be indemnified by the Association against any and all claims and liabilities to which he or she has or shall become subject by reason of serving or having served in any such capacity, or by reason of any action alleged to have been taken, omitted, or neglected by him or her in any such capacity, to the fullest extent allowable by law and statute, including without limitation, the Colorado Revised Nonprofit Corporation Act and C.R.S. 7-22-101.5. The right of indemnification herein provided shall not be exclusive of any rights to which any Director or Officer of the Association, and the Declarant, its assigns and every committee member, may otherwise be entitled by law or statute, provided however, this indemnification shall not reduce or impair any insurance coverage. No Director or Officer, nor the Declarant, its assigns and every committee member, shall be personally liable to the Association, its Members or any other person, except as otherwise provided by the Colorado Revised Nonprofit Corporation Act.

IN WITNESS WHEREOF, for the purposes of forming this Association under the laws of the State of Colorado, the undersigned, constituting the Incorporator of this Association, has executed these Articles of Incorporation this 7<sup>th</sup> day of January, 1999.

  
\_\_\_\_\_  
Nathan K. Miller

Consent by Registered Agent:

  
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Lenard Rieth