

ARTICLES OF INCORPORATION
OF
JACKSON CREEK FILING NO. 5
HOMEOWNERS' ASSOCIATION, INC.

Pursuant to § 7-122-102, Colorado Revised Statutes (C.R.S.), the individual named below causes these Articles of Incorporation to be delivered to the Colorado Secretary of State for filing, and states as follows:

ARTICLE I
NAME

The name of this corporation shall be Jackson Creek Filing No. 5 Homeowners' Association, Inc. ("Association").

ARTICLE II
DURATION

The period of duration of this corporation shall be perpetual.

ARTICLE III
PURPOSES AND POWERS

3.1 General Purpose. The Association is organized to be and constitute the Jackson Creek Filing No. 5 Homeowners' Association, Inc. to which reference is made in the Declaration of Covenants, Conditions and Restrictions for Jackson Creek Filing No. 5 ("Declaration"). The Declaration is executed or to be executed by Trail Ridge Homes at Jackson Creek, LLC, a Colorado limited liability company ("Declarant"). The Declaration is recorded or to be recorded in the office of the Clerk and Recorder of the County of El Paso, State of Colorado ("Recordation"). The Declaration relates to real property in the County of El Paso, State of Colorado, made subject to the Declaration ("Property"). The Association is not organized in contemplation of pecuniary gain or profit to its members.

3.2 Specific Purposes. The specific purposes for which the Association is organized are:

(a) To exercise all of the rights, powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration or in any amendment to the Declaration, the Bylaws, and the Final Development Plan Documents.

(b) To provide for maintenance and preservation of Jackson Creek Filing No. 5 as provided in the Declaration.

(c) To promote, foster, and advance the common interests of Owners of Lots within Jackson Creek Filing No. 5.

(d) To fix, levy, collect and enforce payment of, by any lawful means, assessments and other amounts payable by or with respect to Owners of Lots within Jackson Creek Filing No. 5 as provided in the Declaration.

(e) To manage, maintain, repair and improve the Common Elements within Jackson Creek Filing No. 5 and to perform services and functions for or relating to Jackson Creek Filing No. 5, all as provided in the Declaration.

(f) To enforce covenants, restrictions, conditions and equitable servitudes affecting Jackson Creek Filing No. 5.

(g) To make and enforce rules and regulations with respect to the interpretation and implementation of the Declaration and the use of any property within Jackson Creek Filing No. 5.

(h) To establish and maintain Jackson Creek Filing No. 5 as property of the highest quality and value, and to enhance and protect its desirability and attractiveness.

Each purpose specified herein is an independent purpose and is not to be restricted by reference to or inference from the terms of any other purpose.

3.3 Powers. The Association shall have all of the powers which a nonprofit corporation may exercise under the Colorado Revised Nonprofit Corporation Act and the laws of the State of Colorado in effect from time to time.

ARTICLE IV
PRINCIPAL PLACE OF BUSINESS,
REGISTERED OFFICE AND AGENT

4.1 Principal Place of Business. The principal place of business of the Association shall be at 9116 West Bowles Avenue, Unit 15, Littleton, Colorado 80123. This office is located in Jefferson County, Colorado.

4.2 Initial Registered Office and Initial Registered Agent. The address of the initial registered office of the Association shall be 1600 Stout Street, Suite 1600, Denver, Colorado 80202-3103. The initial registered agent of the Association, whose business office is identical with such registered office, is Ronald J. Snow. The registered office and registered

agent may be changed, without amendment of these Articles of Incorporation, as provided by statute.

ARTICLE V
BOARD OF DIRECTORS

The affairs of the Association shall be conducted, managed and controlled by a Board of Directors. The Board of Directors shall initially consist of three (3) members appointed by the Declarant pursuant to C.R.S. § 38-33.3-303(5)(a)(I). Members of the Board of Directors may be removed and vacancies filled in the manner provided in the Bylaws.

ARTICLE VI
INCORPORATOR

The name and address of the incorporator is as follows:

Ronald J. Snow
McGloin, Davenport,
Severson and Snow, P.C.
1600 Stout Street, Suite 1600
Denver, Colorado 80202-3103

ARTICLE VII
MEMBERS AND VOTING RIGHTS

7.1 Members. Membership in the Association shall consist of the following: all Owners of Lots (as defined in the Declaration) within Jackson Creek Filing No. 5 shall automatically become members of the Association. Upon the sale or transfer of a Lot by an Owner, that Owner's membership shall be automatically transferred to the purchaser or transferee.

7.2 Proxy Voting. A member entitled to vote may vote in person or, if the Bylaws so provide, may vote by proxy executed in writing by the member or his duly authorized attorney-in-fact.

7.3 Cumulative Voting. Cumulative voting by members in elections for Directors shall be permitted.

ARTICLE VIII
LIMITATION ON PERSONAL LIABILITY; INDEMNITY

As provided by C.R.S. § 7-128-402 of the Colorado Revised Nonprofit Corporation Act, a director of the corporation shall not be liable to the corporation or to its shareholders for monetary damages for breach of fiduciary duty except for the following acts:

- (a) Any breach of the director's duty of loyalty to the corporation or its shareholders;
- (b) Acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law;
- (c) Acts specified in C.R.S. § 7-128-403 or § 7-128-501, as amended;
- (d) Any transaction from which the director derived an improper personal benefit.

The corporation shall indemnify its officers, directors, employees and agents as provided in § 7-129-101, et seq., of the Colorado Revised Nonprofit Corporation Act (or any corresponding section thereof). The corporation shall advance expenses to officers, directors, employees and agents as provided in the Colorado Revised Nonprofit Corporation Act. The corporation may purchase and maintain insurance to effect the indemnification provided for hereunder, but the corporation shall not be required to provide such insurance.

ARTICLE IX

MISCELLANEOUS

9.1 Distribution of Assets on Dissolution of the Association. In the event of dissolution of the Association, the assets of the Association shall, to the extent reasonably possible, be conveyed or transferred to an appropriate public or governmental agency or agencies or to a nonprofit corporation, association, trust or other organization, to be used, in any such event, for the common benefit of members for similar purposes for which the particular asset was held by the Association. To the extent the foregoing is not possible, the Association assets shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to members in proportion to the number of Lots owned by each member within Jackson Creek Filing No. 5.

9.2 Bylaws. The Association shall have the power to make and alter Bylaws, not inconsistent with these Articles of Incorporation or with the laws of the State of Colorado or with the Declaration, for the administration and regulation of the affairs of the corporation. The initial Bylaws of the Association shall be adopted by the Board of Directors. The power to alter, amend or repeal the Bylaws or adopt new Bylaws shall be vested in the members, except as may be provided in the Bylaws, subject to the provisions in the Declaration for approval of amendments by the FHA or VA and/or First Mortgagees (if any).

9.3 Amendment of Articles. Except for particular provisions of these Articles which expressly require a higher voter requirement, the Association may amend these Articles of Incorporation from time to time in accordance with the Colorado Revised Nonprofit Corporation Act in any and as many respects as may be desired so long as the Articles of Incorporation as amended contain only such provisions as are lawful under that

Act and so long as the Articles of Incorporation as amended shall not be contrary to or inconsistent with any provision of the Declaration.

9.4 Definitions. The capitalized terms in these Articles of Incorporation shall have the same meaning as any similarly capitalized terms defined in the Declaration.

9.5 Consent for Litigation or Arbitration. In order to protect the members and the Association from indiscriminate arbitration or litigation, and the accompanying expense, distraction and commitment of financial and other resources, the Association shall not initiate or participate in any arbitration or litigation (other than the collection of dues payable to the Association), in its own name or on behalf of the members, without complying with the provisions of this Section 9.5. Prior to the initiation or participation by the Association in any arbitration or litigation, the Board must first give due consideration to (a) the expense, distraction, and commitment of financial and other resources that will be incurred or suffered by the Association and its members; and (b) whether mediation is a valid and reasonable alternative to such arbitration or litigation. If the Board reasonably determines that arbitration or litigation is appropriate after such due consideration, the Board shall (i) call a special meeting of the members (pursuant to the terms of these Bylaws); (ii) report to the members at the Special Meeting all of the Board's concerns, deliberations and conclusions as required in above Section 9.5(a) and (b); (iii) establish a budget for such arbitration or litigation and describe that budget in reasonable detail to the members; (iv) recommend to the members that the Association initiate or participate (as the case may be) in arbitration or litigation; and (v) recommend adoption of the budget for such action. Notwithstanding any other provision of this Declaration, the Articles or these Bylaws, and regardless of the number of members actually attending such Special Meeting, the Association shall not initiate or participate in any arbitration or litigation without the prior written consent of members representing at least sixty-seven percent (67%) of all members of the Association to that course of action, subject to the budget for such action which must be separately approved by the same percentage of members. The above procedure shall not be required whenever the Association is named as a defendant in an arbitration or litigation; however, the Board shall attempt to mediate or seek alternative dispute resolution of any such dispute and the Association shall not expand the scope of such dispute by prosecuting counterclaims without members' consent as required by this Section 9.5. This Section 9.5 cannot be amended or deleted from these Articles without the express written consent of at least seventy-five percent (75%) of all members of the Association, notwithstanding any other quorum requirements.

9.6 Binding Arbitration and Waiver of Jury Trial by Owners. The Association acknowledges that Owners of Lots within Jackson Creek Filing No. 5 have agreed (either expressly by agreement with the original seller of Lots within Jackson Creek Filing No. 5, or by taking title to a Lot subject to notice set forth in the Declaration and in the real estate records affecting the Lot and Jackson Creek Filing No. 5 and subject to the specific restrictions discussed herein) that in exchange for a unified consolidated forum for resolving disputes relating to any potential design or construction defect allegations with or among the

original Declarant, the contractor, subcontractors, design professionals or other relevant parties, Owners have agreed to **BINDING ARBITRATION** and a **WAIVER OF A TRIAL BY JURY OR JUDGE** for any and all such claims. The Association is obligated to and shall honor such waivers and obligations of the Owners (for example, waivers of trial by jury and the obligation for binding arbitration) and shall only participate in arbitration whenever it is designated as a party in an action including an Owner. The Association shall not voluntarily participate in any litigation in which there are allegations of construction or design defects relating to Jackson Creek Filing No. 5 or any Lots within Jackson Creek Filing No. 5 without the express written consent of members representing at least sixty-seven percent (67%) of all members of the Association. This Section 9.6 cannot be amended or deleted from these Articles without the express written consent of at least seventy-five percent (75%) of all members of the Association, notwithstanding any other quorum requirements.

9.7 No Destructive Testing. In the event any design or construction defect relating to the construction or maintenance of common areas within Jackson Creek Filing No. 5 is alleged, neither the Association, any member of the Association, nor any Owner of a Lot within Jackson Creek Filing No. 5 shall have a right to perform destructive testing on any portion of the common areas within Jackson Creek Filing No. 5 (including, without limitation, any common areas adjacent to or being a part of any Lot within Jackson Creek Filing No. 5) unless the party proposing such destructive testing can show direct proof that there is actual, identifiable and confirmable evidence of a material defect in construction or design, which evidence is provided to the Association and reviewed and confirmed by the Association prior to any such destructive testing. Mere allegation of defects in construction or design (without concrete proof of such defect) will not be sufficient. In the event substantial evidence is provided to the Association, and in the event the Association has thoroughly reviewed and confirmed the existence of a material defect in construction or design, the Association shall not grant its consent to any destructive testing unless and until the Association has received both an affirmative, written obligation from the party who proposes such testing to immediately repair and/or replace the tested area and improvements, together with a cash deposit, letter of credit or bond to cover one hundred twenty five percent (125%) of the estimated cost to repair and/or replace the areas and improvements to be tested, such deposit, letter of credit or bond being in a form that will allow the Association to immediate draw against the same in the event the common areas subject to such destructive testing is not repaired or replaced to an as-new condition within seven (7) days from the date such testing has been completed, or within twenty one (21) days from the date such testing commenced (whichever is earliest). This Section 9.7 cannot be amended or deleted from these Articles without the express written consent of at least seventy-five percent (75%) of all members of the Association, notwithstanding any other quorum requirements.

ARTICLE X
RESPONSIBLE PARTY

The (a) name or names, and (b) mailing address or addresses, of any one or more of the individuals who cause this document to be delivered for filing, and to whom the Secretary of State may deliver notice if filing of this document is refused, are: Ronald J. Snow, Esq., McGloin, Davenport, Severson and Snow, P.C., 1600 Stout Street, Suite 1600, Denver, Colorado 80202-3103.

ARTICLE XI
CONTACT

The Colorado Secretary of State may contact the following authorized person regarding this document:

Ronald J. Snow, Esq.
McGloin, Davenport, Severson and Snow, P.C.
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Denver, Colorado 80202-3103
Phone: (303) 863-9800
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