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Articles of Incorporation for a Nonprofit Corporation

filed pursuant to § 7-122-101 and § 7-122-102 of the Colorado Revised Statutes (C.R.S.)

1. The domestic entity name for the nonprofit corporation is Lincoln Commons Homeowners Association.
(Caution: The use of certain terms or abbreviations are restricted by law. Read instructions for more information.)

2. The principal office address of the nonprofit corporation's initial principal office is

Street address 12218 Crystal Downs Road
(Street number and name)

Peyton CO 80831
(City) (State) (ZIP/Postal Code)

United States
(Province – if applicable) (Country)

Mailing address
(leave blank if same as street address)

(Street number and name or Post Office Box information)

(City) (State) (ZIP/Postal Code)

(Province – if applicable) (Country)

3. The registered agent name and registered agent address of the nonprofit corporation's initial registered agent are

Name
 (if an individual) Weitzel Adam L
(Last) (First) (Middle) (Suffix)

OR
 (if an entity)
(Caution: Do not provide both an individual and an entity name.)

Street address 90 S Cascade Ave.
(Street number and name)

Suite 840

Colorado Springs CO 80903
(City) (State) (ZIP Code)

Mailing address
(leave blank if same as street address) _____
(Street number and name or Post Office Box information)

(City) CO _____
(State) (ZIP Code)

(The following statement is adopted by marking the box.)

The person appointed as registered agent above has consented to being so appointed.

4. The true name and mailing address of the incorporator are

Name
(if an individual) Guinane Jordan _____
(Last) (First) (Middle) (Suffix)

OR

(if an entity) _____
(Caution: Do not provide both an individual and an entity name.)

Mailing address 12218 Crystal Downs Road
(Street number and name or Post Office Box information)

Peyton CO 80831
(City) (State) (ZIP/Postal Code)

(Province – if applicable) United States
(Country)

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

The corporation has one or more additional incorporators and the name and mailing address of each additional incorporator are stated in an attachment.

5. (If the following statement applies, adopt the statement by marking the box.)

The nonprofit corporation will have voting members.

6. Provisions regarding the distribution of assets on dissolution:

See Attachment

7. (If the following statement applies, adopt the statement by marking the box and include an attachment.)

This document contains additional information as provided by law.

8. (Caution: Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)

(If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.)

The delayed effective date and, if applicable, time of this document is/are _____.
(mm/dd/yyyy hour:minute am/pm)

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9. The true name and mailing address of the individual causing the document to be delivered for filing are

Weitzel Adam L
(Last) (First) (Middle) (Suffix)
90 S Cascade Ave.
(Street number and name or Post Office Box information)
Suite 840
Colorado Springs CO 80903
(City) (State) (ZIP/Postal Code)
United States
(Province – if applicable) (Country)

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

Disclaimer:

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**ATTACHMENT TO
ARTICLES OF INCORPORATION
OF
LINCOLN COMMONS HOMEOWNERS ASSOCIATION
A COLORADO NONPROFIT CORPORATION**

The following articles are hereby incorporated into the Articles of Incorporation of Lincoln Commons Homeowners Association, a Colorado nonprofit corporation (the “**Corporation**”).

**ARTICLE 1
DEFINITIONS**

The following capitalized terms used herein shall have the meaning and definitions set forth below:

1.1 “**CCOIA**” shall mean the Colorado Common Ownership Act, C.R.S. § 38-33.3-101 *et seq.*

1.2 “**Common Elements**” shall mean any real estate within the Community owned or leased by the Association, other than a Unit.

1.3 “**Community**” shall mean the real estate described in the Declaration with respect to which a person, by virtue of such person’s ownership of a Unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvements of other real estate described in the Declaration, and commonly known or referred to as Lincoln Common Townhomes.

1.4 “**Declarant**” shall mean that person named in the Declaration reserving or succeeding to any special declarant rights.

1.5 “**Unit**” shall mean a physical portion of the Community which is designated for separate ownership or occupancy and the boundaries of which are described in or determined from the Declaration.

1.6 “**Nonprofit Act**” shall mean the Colorado Revised Nonprofit Corporation Act, C.R.S. § 7-121-101 *et seq.*

1.7 “**Owner**” shall mean the Declarant or other person who owns a Unit.

1.8 “**Period of Declarant Control**” shall mean that period during which the Declarant may appoint and remove the officers and members of the Board of Directors of the Corporation.

ARTICLE 2 PURPOSE

The business, objects and purposes for which the Corporation is formed are as follows:

2.1 To be and constitute the owners' association (hereinafter called the "**Association**") to which reference is made in the Declaration of Covenants, Conditions and Restrictions for the Lincoln Commons Townhomes and any amendment or supplement thereto (the "**Declaration**") 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.

2.2 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 Community as a project of quality and value; enhancing and protecting its value, desirability and attractiveness; promoting the welfare of the residents of said project and providing for the maintenance, preservation and architectural control of the Units and Common Elements within said Community.

ARTICLE 3 POWERS

In furtherance of its purposes, this Corporation shall have all of the powers conferred upon nonprofit corporations and upon homeowners associations by the statutes and common law of the State of Colorado in effect from time to time, shall have all rights and powers conferred upon owners' associations by any statute, as now or hereafter enacted, 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:

3.1 To fix, levy, collect and enforce payment by any lawful means, all charges, fines, sums or assessments pursuant to the terms of the Declaration or as allowed by law or statute; to pay all expenses in connection there with and all office and 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;

3.2 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;

3.3 To borrow money, and, with the assent of Members holding at least sixty-seven percent (67%) of the Proportionate Interests, and subject to C.R.S. § 38-33.3-312, to mortgage, pledge, deed in trust, or hypothecate any or all of the Association's real property, assessment income, or personal property as security for money borrowed or debts incurred;

3.4 To dedicate, sell, or transfer, subject to C.R.S. § 38-33.3-312, all or any part of the Common Elements to any public agency, authority, or utility; except as otherwise provided in the Declaration, no such dedication or transfer shall be effective unless an instrument has been signed by Members holding at least sixty-seven percent (67%) of the Proportionate Interests and agreeing to such dedication, sale, or transfer;

3.5 To participate with the assent of Members holding at least sixty-seven percent (67%) of the Proportionate Interests, subject to C.R.S. § 38-33.3-221, in mergers and consolidations with other nonprofit corporations organized for the same purposes and to annex additional office property and Common Elements subject to the requirements and restrictions contained in the Declaration;

3.6 To manage, control, operate, maintain, repair and improve the Common Elements of the Community;

3.7 To enforce the terms, covenants, restrictions, conditions, and uses contained in the Declaration as provided therein and to have all rights, powers, duties, and interests of the Association including without limitation under the Declaration;

3.8 To engage in activities which will actively foster, promote, and advance the common ownership interests of Owners of Units, including the interest of the Declarant;

3.9 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 Corporation, with any person, firm, association, corporation or other entity or agency, public or private, subject to the requirements of the Declaration; and

3.10 To adopt, alter and amend or repeal such Bylaws and Rules may be necessary or desirable for the proper management of the affairs of the Corporation; provided, however, that such Bylaws may not be inconsistent with or contrary to any provisions of these Articles of Incorporation or the Declaration.

ARTICLE 4 MEMBERSHIP

4.1 This Corporation shall be a membership corporation without certificates or shares. There shall be one class of membership.

4.2 As more fully provided in the Declaration and Bylaws, every Owner of a Unit which is subject by the Declaration to assessment by the Association, including contract sellers, shall be a “**Member**” of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership in the Association shall be appurtenant to and may not be separated from ownership of such Unit. No Owner, whether one (1) or more Persons, shall have more than one (1)

membership per Unit owned, but all of the Persons owning each Unit shall be entitled to the rights of membership and of use and enjoyment appurtenant to such ownership.

4.3 A membership in this Corporation and the share of a Member in the assets of this Corporation shall not be assigned, encumbered or transferred in any manner except as appurtenant to the transfer of title to the Unit 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 Unit as further security for a loan secured by a lien on such Unit; foreclosure of a membership interest shall not be considered a purchase of such interest under C.R.S. § 7-126-303.

4.4 A transfer of membership shall occur automatically upon the transfer of title to the Unit to which the membership pertain, and such membership terminates when an Owner transfers title; provided however, that the Bylaws of this Corporation may contain reasonable provisions and requirements with respect to recording such transfers on the books and records of this Corporation.

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

4.6 The Bylaws may contain additional provisions setting forth the rights, privileges, duties and, responsibilities of the Members; provided however, the provisions of 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 5 VOTING RIGHTS

5.1 The Association shall have at least one (1) class of voting membership comprised of all the Owners, including the Declarant. The Bylaws may set forth additional classifications of membership from time to time.

5.2 Subject to the provisions of the Declaration and Bylaws, all members shall be entitled to vote on Association matters on the basis of one (1) equal vote for each Unit owned. The number of votes shall be determined by reference to the Map for the Unit in question as recorded by the Declarant. When more than one (1) Person is the Owner of any Unit, all such Persons shall be Members. A vote for such Unit may be exercised by one (1) Person or in the alternative, such Persons as the Owners of such Unit shall themselves determine. If only one of the multiple Owners of a Unit is present at a meeting of the Association, such Owner is entitled to cast the vote allocated to that Unit. Alternatively, if more than one (1) of the multiple Owners are present at a meeting in person or by proxy, the vote allocated to their Unit maybe cast only by agreement of the majority interest of the Owners. There shall be deemed to be a majority agreement if any one (1) of the multiple Owners casts the vote allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of such Unit.

5.3 Cumulative voting is prohibited. Members who are not in good standing shall not be counted for quorum or approval percentages.

5.4 The Corporation may suspend the voting and other membership rights of a Member for failure to comply with the rules and regulations or the Bylaws of the Corporation or with any other obligations of the Owners of a Unit under the Declaration. All Members shall be entitled to vote on all matters, except as otherwise provided in the Declaration or Bylaws and except any Members who are not in good standing due to default in any obligations to the Corporation; those Members shall also be subject to the remedies set forth in the Declaration as provided by law or statute.

5.5 Notwithstanding anything herein to the contrary, the Declarant shall have the right to appoint the Board of Directors as follows: During the Period of Declarant Control, as described in the Declaration, the Declarant may appoint and remove the officers and the members of the Board of Directors. The Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board of Directors before termination of the Period of Declarant Control, but in that event, the Declarant may require, that specified actions of the Association or Board of Directors, as described in a recorded instrument executed by the Declarant, be approved by the Declarant before they become effective.

5.6 Upon the termination of any Period of Declarant Control, the Owners shall elect a Board of at least three members, at least a majority of whom must be Owners other than the Declarant or designated representatives of Owners other than the Declarant. The Board shall elect the officers. The Board members and officers shall take office upon election or appointment as provided herein.

5.7 Notwithstanding the foregoing, until expiration of the Period of Declarant Control, and subject to the limitations of CCIOA, the Declarant shall have additional rights and qualifications as may be provided under CCIOA and the Declaration, including the exclusive power to appoint and remove the members of the Board of Directors and the officers of the Association, which exclusive powers are established by and shall be governed by the Declaration.

ARTICLE 6 BOARD OF DIRECTORS

6.1 The business and affairs of the Corporation shall be conducted, managed and controlled by an executive board of directors (“**Board of Directors**”). The Board of Directors shall initially consist of three (3) Directors, and thereafter the specific number shall be set forth as provided in the Bylaws of the Corporation, but shall not exceed nine (9) Directors. Except for Directors appointed by the Declarant, Directors shall be Owners as defined in the Declaration and shall meet any other qualifications as set forth in the Bylaws. During the Period of Declarant Control, the members of the Board of Directors shall be appointed by the Declarant and need not be Owners of a Unit.

6.2 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 the Bylaws.

ARTICLE 7 OFFICERS

The Board of Directors shall 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 Corporation. The Officers shall have such duties as may be prescribed in the Bylaws of the Corporation and shall serve at the pleasure of the Board of Directors.

ARTICLE 8 DISSOLUTION, MERGER, OR CONSOLIDATION

Subject to the provisions of the Declaration, the Corporation may be dissolved, merged or consolidated with the assent given in writing and signed by Members owning and representing at least sixty-seven percent (67%) of the Units. Any dissolution, merger or consolidation shall comply with C.R.S. § 38-33.3-218, C.R.S. § 38-33.3-221, and the Colorado Revised Nonprofit Corporation Act. Upon dissolution of the Corporation other than incident to a merger or consolidation, the assets of the Corporation 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, nonprofit corporation, association, trust or other organization to be devoted to purposes similar to those for which this Corporation was created.

ARTICLE 9 AMENDMENT

9.1 Except as provided in Paragraph 9.2 below, amendments to these Articles of Incorporation shall require the approval, at a meeting duly called under the Bylaws, of Members owning and representing at least sixty-seven percent (67%) of the Units, present in person or by proxy at any meeting of Owners at which a quorum is present; provided, however, that no amendment to these Articles of Incorporation shall be contrary to or inconsistent with the provisions of the Declaration and provided further that the Declarant shall have the right to amend these Articles of Incorporation as provided in the Declaration and shall be entitled to approve or reject any and all amendments during the Period of Declarant Control.

9.2 Notwithstanding any contrary provisions of these Articles of Incorporation or any other document, the Declarant hereby reserves the right during the Period of Declarant Control, without approval or vote of the Members or Mortgagees, to amend these Articles of Incorporation and to amend the Bylaws, as may be necessary to exercise Declarant's reserved rights, or to correct typographical errors or make clarifications, or as may be required in writing by any lender providing financing for the construction of the Community, and each Owner and mortgagee by accepting a deed, mortgage or other instrument affecting a Unit hereby appoints Declarant as his, her, or its attorney-in-fact for purposes of executing in said Owner's or

mortgagee'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 Unit 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 10 NONPROFIT PURPOSES

The Corporation is formed under the Colorado Revised Nonprofit Corporation Act and not for pecuniary profit or financial gain. The Corporation is organized and operated to provide for the acquisition, construction, management, maintenance and care of property of the Community as provided in the Declaration, and is intended to qualify as an "Owners Association" as defined in § 528(c) of the Internal Revenue Code. Unless the Board of Directors determines otherwise, the Corporation shall receive only such income and make only such expenditures as will enable it to maintain such status under applicable sections of the Internal Revenue Code.

ARTICLE 11 NON-LIABILITY AND INDEMNITY OF OFFICERS AND DIRECTORS

11.1 No officer or director of the Corporation shall be personally liable to the Corporation or to its Members for monetary damages for breach of fiduciary duty as a director to the fullest extent of the Nonprofit Act, or other law or statute. If the Nonprofit Act hereafter is amended to further eliminate or limit the liability of an officer or director, then such officer or director shall not be liable to the fullest extent permitted by the amended Nonprofit Act, in addition to the other provisions of these Articles of Incorporation and the Corporation's Bylaws which are incorporated herein by this reference.

11.2 No officer or director of the Corporation shall be personally liable for any contract or claim against the Corporation nor for any injury to person or property arising out of a tort committed by such person unless such officer or director committed a criminal offense or committed a wanton and willful wrongful act or omission. The protections afforded by these Articles of Incorporation and any similar protections afforded by the Corporation's Bylaws shall not restrict other common law and statutory protections and rights that such officer or director may have and shall not reduce or impair any insurance coverage of such persons.

11.3 Unless otherwise specifically provided herein, or in the Nonprofit Act, or the Declaration, no officer or director shall be held liable for actions taken or omissions made in the performance of his or her duties as an officer or director except for wanton and willful wrongful acts or omissions.

11.4 A director or officer is not liable as such to the Corporation or its Members for any action taken or omitted to be taken as a director or officer in the performance of the duties of such position in compliance with C.R.S. § 7-128-401(2).

11.5 The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee person, employee, fiduciary, or agent of the Corporation or who, while a director, officer, committee person, employee, fiduciary, or agent of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee, fiduciary, or agent of any other foreign or domestic corporation or of any partnership, joint venture, trust, other enterprise, or employee benefit plan against any liability asserted against or incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability, as provided in the Nonprofit Act or the Declaration or otherwise.

11.6 Each officer and director of the Corporation, now or hereinafter serving in any such capacity, shall be indemnified by the Corporation 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 these Articles of Incorporation, the Bylaws, or any law and statute, including without limitation, the Nonprofit Act. The right of indemnification herein provided shall not be exclusive of any rights to which any director or officer of the Corporation may otherwise be entitled by law or statute, provided however, this indemnification shall not reduce or impair any insurance coverage of the Corporation, officer, director, or any person described above in Section 11.5 of this Article.

11.7 Any repeal or modification of any of the foregoing paragraphs shall not adversely affect any right or protection of a director, officer or other person described above in this Article existing on or before such repeal or modifications.

ARTICLE 12 CONFLICTS OF INTEREST

Except as otherwise provided by law or statute, no contract, transaction, or other financial relationship shall be void or voidable or be enjoined, set aside, or give rise to an award of damages or other sanctions in any proceeding by any Member of the Corporation or by or in the right of the Corporation, solely because of any conflicting interest so long as the contract, transaction, or other financial relationship complies with the Nonprofit Act, including, without limitation, C.R.S. § 7-128-501. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes, approves, or ratifies such contract, transaction, or relationship.