

**ARTICLES OF INCORPORATION**  
**OF**  
**TWILIGHT PEAKS HOMEOWNERS ASSOCIATION, INC.**

In compliance with the requirements of the Colorado Non-Profit Corporation Act, cited as Articles 20 to 29, inclusive, of Title 7, Colorado Revised Statutes, as amended and supplemented, the undersigned have and hereby acknowledge their intent to form a corporate entity under and by virtue of said law.

**ARTICLE I - NAME**

The name of the corporation shall be **Twilight Peaks Homeowners Association, Inc.**, a Colorado non-profit corporation (hereinafter referred to as the "Association").

**ARTICLE II - PRINCIPAL OFFICE**

The principal and registered office of the Association is located in La Plata County, Colorado, at

Twilight Peaks Homeowners Association, Inc.  
c/o Gerald B. McDaniel  
McDaniel, Baty & Miller.  
1040 Main Avenue  
Durango, Colorado 81301

**ARTICLE III - INITIAL REGISTERED AGENT**

Robert W. Chamberlain, whose address is 440 Glorietta Blvd., Coronado, California 92118-1951, is hereby appointed the initial registered agent of this Association.

**ARTICLE IV - PURPOSE OF THE ASSOCIATION**

This Association is not formed for the pecuniary gain or profit to the members thereof. The specific purposes for which the Association is formed are:

**A.** To provide for the maintenance, preservation, and control of the Lots and Common Elements within that certain real property known as the Twilight Peaks Mountain Village (hereinafter referred to as the "Village") as described in Exhibit "B" of the Declaration of Covenants, Conditions and Restrictions of Twilight Peaks Mountain Village Subdivision, recorded on the 5th day of December, 1994, at Reception Number 679693 in the records of the office of the Clerk and Recorder of La Plata County, Colorado (hereinafter the "Declaration") and including such additional real property or any portions thereof, as described in Exhibit "A" of said Declaration, and any improvements thereon, which may become subject to the Declaration by the recording of a Supplementary Declaration as provided by the terms of said Declaration; and

**B.** To perform such other functions as are set forth in the Declaration and to do everything necessary, proper, advisable, or convenient for the accomplishment of the purposes hereinabove set forth and to do all other things incidental thereto.

#### **ARTICLE V - POWERS**

In furtherance of its purposes, but not otherwise, the Association shall have the power to:

**A.** Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as may be required or provided in the Colorado Common Interest Ownership Act (the "Ownership Act") or as set forth in the Declaration, including any Supplementary Declarations recorded in accordance with the provisions of said Declaration and as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length, and pay all expenses and financial obligations in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied or imposed against the property of the Association;

**B.** Fix, levy, collect and enforce payment by any lawful means of all charges or assessments pursuant to the terms of the Declaration;

**C.** 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 owned by, or for which the Association is responsible, in connection with the affairs of the Association, subject to all restrictions imposed by the Declaration, these Articles and the Bylaws of the Association (hereinafter the "Bylaws");

**D.** Borrow funds in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of these Articles, the Declaration or

Bylaws and to authorize the appropriate officers to execute all such instruments evidencing such indebtedness as the Board of Directors of the Association may deem necessary, provided, however, that the Board shall not borrow more than \$10,000.00 or cause the Association to be indebted for more than \$10,000.00 at any one time without the prior approval of a majority vote of the members of the Association;

E. Dedicate, sell, or transfer all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions and restrictions as set forth in the Declaration. The Association shall not have the authority to, by act or omission, to seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) and seventy-five percent (75%) of the Owners of the individual Lots in the Village shall have given their prior written approval. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the residents of the Village shall not be deemed a transfer within the meaning of this clause;

F. Administer and enforce the provisions of the Declaration affecting the Village to the extent the Association may be so authorized under such Declaration;

G. Establish, make, and enforce compliance with, Design Guidelines and such reasonable rules and regulations pertaining to the use of Common Elements and to the conduct of Owners, their agents, guests, invitees and tenants while on or in the Village, with the right to amend same from time to time, as such may be necessary or desirable for the operation, use and occupancy of the Village consistent with the Declaration and including the right to establish, levy and collect fines and other charges associated therewith;

H. 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 purpose of the Association, with or in association with any person, firm, association, corporation, or other entity or agency, public or private;

I. Adopt, alter and amend or repeal such Bylaws as may be necessary or desirable for the proper management of the affairs of the Association; provided, however, that such Bylaws may not be inconsistent with or contrary to the provisions of the Declaration, these Articles of Incorporation, or the Colorado Common Interest Ownership Act, as such may be amended from time to time; and

J. Have and to exercise any and all powers, rights, and privileges which a corporation organized under the Non-Profit Corporation Act of the State of Colorado by law may now or hereafter have or exercise, specifically including, without limitation, all powers set forth in C.R.S. 38-33.3-302 of the Colorado Common Interest Ownership Act.

## **ARTICLE VI - MEMBERSHIP**

Every person or entity who is a record owner ("Owner") of a fee or undivided fee interest in any Lot which is subject to assessments levied by the Association and to the Declaration or any Supplemental Declarations, which may be amended from time to time, shall be a member of the Association; provided, however, that any persons or entities who hold an interest merely as security for the performance of an obligation shall not be a member. Membership shall be appurtenant to and may not be separated from ownership of any Lot; provided, however, that any Owner may appoint, in writing to the Association, a Delegate to exercise the rights of such Owner but not including the right to serve as an officer or member of the Board of Directors.

## **ARTICLE VII - MEMBERSHIP VOTING RIGHTS**

A. There shall initially be a total of eighteen (18) votes, one vote for each of the eighteen (18) lots initially included in the Village, eligible to be cast in any action in which all members of the Association are entitled to vote as set forth in these Articles, the Bylaws and the Declaration. Thereafter, the number of total votes shall be the same as the total number of individual Lots within the Village and which are subject to the Declaration, including any Supplemental Declarations, which may be amended from time to time. The voting rights of the members shall be one vote per Lot. There shall be cumulative voting privileges in all elections of members of the Board of Directors. Lot owners shall have the right to vote in person or by written proxy or assign the right to vote as Owners' proxy to any other person, in writing, with signatures of all Co-Owners of such Lot. If any Lot is permitted, by the terms of the Declaration, to be resubdivided into more than one Lot, then in the event of such resubdivision each Lot thus created shall be entitled to one vote; however, if such resubdivision was not in accordance with the provisions of the Declaration, including any recorded Supplements or amendments thereto, the resubdivided Lots shall be considered as a single Lot and shall be allocated only one vote which shall be cast in a manner agreed to by all of the Owners of the resubdivided Lots.

B. When more than one person holds an interest in a Lot, all such persons may appoint one of their Co-Owners as proxy to cast the vote for that Lot. The vote for such Lot shall be cast as the Co-Owners thereof agree, but the voting interest allocated to such Lot shall not be divided among Co-Owners. In the event the Co-Owners of such Lot are unable to agree on how to vote on any given matter or because of such Owners' inability to communicate and determine how a vote will be made, the Association, acting through its Board, may vote in place of such group. If any vote is cast by less than all of the Co-Owners of any Lot(s), the Association shall be entitled to the presumption that such vote was duly cast without the presence of fraud, conflict or undue influence and the Co-Owners hereby consent to hold the Association harmless for any and all claims of whatever nature arising out of action taken as a result of said vote and further agree to

indemnify the Association from liability for such claims, including reasonable attorney fees and conflict resolution expenses.

C. The Association, by action of its Board of Directors, shall have the right to suspend the voting rights of any Owner for any period during which any Assessment or charge levied by the Association against such Owner or his Lot remains unpaid.

### **ARTICLE VIII - QUORUM**

Except as otherwise provided in these Articles or the Declaration, presence in person or by proxy of Association members possessing a sufficient voting interest to constitute more than fifty percent (50%) of the voting interests of all members shall constitute a quorum and such members present in person or by proxy shall constitute the members entitled to vote upon any issue presented at a meeting at which a quorum is present. If the required quorum is not present, those present may adjourn the meeting for no more than sixty (60) days without additional notice or, alternatively, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following such preceding meeting. A majority vote of such members present in person or by proxy shall be sufficient to make decisions binding on all Owners unless a different number or method of voting is expressly required by statute or by the Declaration or these Articles.

### **ARTICLE IX - BOARD OF DIRECTORS**

The business and affairs of the Association shall be conducted, managed, and controlled by a Board of Directors (hereinafter the "Board") consistent with powers granted herein in Article V but as limited by C.R.S. 38-33.3-101 et. seq. The Board shall consist of not less than three (3) members nor more than five (5) members (hereinafter "Board Members"), as set forth from time to time in the Bylaws. The method of election and term of office of members of the Board shall be determined by the Bylaws consistent with C.R.S. 38-33.3-101 et. seq. The Board Members shall hold office until their successors have been elected and qualified. Board Members may be removed and vacancies on the Board may be filled in the manner provided in the Bylaws and the Declaration. Board Members must be at least eighteen (18) years of age and residents of the United States of America, all of whom shall be Owners and may be nonresidents of Colorado. When the Owner of a Lot is not a natural person, such Owner may designate an individual who is otherwise qualified to serve hereunder to represent such Owner, including, without limitation, an officer of the respective corporation in the case of a corporate Owner, a general partner of a partnership, a member of a limited liability company, a trustee of a trust or an executor of an estate, and such individual may serve

on the Board of Directors, be an officer of the Association or otherwise serve on behalf of such Owner if so elected or appointed in accordance with the provisions of these Articles, the Bylaws and the Declaration.

Notwithstanding anything to the contrary herein, a majority of the members of the Board of Directors shall be appointed and may be removed by Twilight Peaks, LLC, a Colorado limited liability company (hereinafter referred to as the "Declarant") until sixty (60) days after conveyance of at least seventy-five percent (75%) of the Lots in the Village to Owners other than the Declarant, or two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business, including any such Lots which may hereafter be created and included in the Village and become subject to the Declaration pursuant to the provisions of the Declaration, whichever takes place earlier. Such members appointed to the Board by the Declarant may be non-Owners. The names and addresses of the three persons who are to initially act in the capacity of Board Members until their successors are duly elected and qualified are as follows:

	<u>Name</u>	<u>Address</u>
1.	Robert W. Chamberlain	440 Glorietta Boulevard Coronado, California 92118
2.	Deborah S. Chamberlain	440 Glorietta Boulevard Coronado, California 92118
3.	Patricia Chamberlain	504 Glorietta Boulevard Coronado, California 92118

#### **ARTICLE X - OFFICERS**

The Board of Directors shall appoint a President, a Vice President, a Secretary and a Treasurer as officers of the Association. The Board may additionally appoint such other officers as the Board believes will be in the best interests of the Association. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to the Bylaws of the Association. The President must be a member of the Board. The term of office, duties and method of removal of officers shall be as prescribed in the Bylaws of the Association.

#### **ARTICLE XI - DURATION**

The Association shall exist perpetually.

**ARTICLE XII - AMENDMENTS**

Amendment to these Articles shall require the assent of at least two-thirds (2/3) of the voting interest of the members of the Association entitled to vote as set forth in Article VII herein.

**ARTICLE XIII - DISSOLUTION; DISTRIBUTIONS**

The process or procedures for any dissolution, merger or consolidation of the Association shall be governed specifically by C.R.S. 38-33.3-101 et. seq. and generally by C.R.S. 7-26-101, et seq.

**IN WITNESS WHEREOF**, for the purposes of forming this corporation under the laws of the State of Colorado, **Twilight Peaks, LLC**, constituting the incorporator of this Association, has executed these Articles of Incorporation and caused its company name to be subscribed hereto by its Managing Member on this 13th day of December, 1994.

**Twilight Peaks, LLC**

  
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Robert W. Chamberlain, Managing Member