

**NONPROFIT**

**ARTICLES OF INCORPORATION  
OF  
PARK AVENUE LOFTS CONDOMINIUM ASSOCIATION, INC.**

The undersigned adult natural person, acting as incorporator, hereby establishes a nonprofit corporation pursuant to the Colorado Revised Nonprofit Corporation Act and adopts the following articles of incorporation:

**ARTICLE I  
NAME**

The name of the corporation is Park Avenue Lofts Condominium Association, Inc.

**ARTICLE II  
DURATION**

The corporation shall have perpetual existence.

FILED  
DONETTA DAVIDSON  
COLORADO SECRETARY OF STATE  
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SECRETARY OF STATE  
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**ARTICLE III  
REGISTERED OFFICE AND AGENT**

The address of the initial registered office of the corporation is c/o French, West, Brown, Huntley & Thompson, P.C., P.O. Box 588, 100 South Ridge Street, Suite 204, Breckenridge, Colorado, 80424. The name of its initial registered agent at such address is Mark D. Thompson.

*PRINCIPAL ADDRESS SHALL BE SAME AS REGISTERED OFFICE.*

The undersigned hereby consent to his appointment as initial registered agent.

  
Mark D. Thompson

**ARTICLE IV  
DEFINITIONS**

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4.01 Basic Definitions.

As used in these Articles, the following terms have the following meanings:

(a) "Act" means the Colorado Common Interest Ownership Act, Colorado Revised Statutes 38-33.3-101 through 38-3 33.3-319, as the same may be amended from time to time.

(b) "Area" of a Unit means the total number of square feet of such Unit as shown on the Map or as set forth on Exhibit B to the Declaration, or if the square footage of a Unit is not

*C*

shown on the Map or set forth on Exhibit B to the Declaration, then "Area" means the total number of square feet of such Unit as determined by the Executive Board.

(c) "Articles" means these Articles of Incorporation of the Association, as the same may be amended from time to time.

(d) "Association" means Park Avenue Lofts Condominium Association, Inc., a Colorado nonprofit corporation, and its successors and assigns.

(e) "Association Documents" means the Declaration, these Articles, the Bylaws and the Rules and Regulations, as the same may be amended from time to time.

(f) "Bylaws" means the bylaws of the Association, as the same may be amended from time to time.

(g) "Commercial Unit" means each Unit designated as a Commercial Unit on the Map.

(h) "Common Elements" means the General Common Elements and the Limited Common Elements.

(i) "Condominium" means Park Avenue Lofts Condominium, the common interest community created on the Property by the Declaration, consisting of the Units and the Common Elements.

(j) "Declarant" means 500 South Park Ave., L.L.C., an Illinois limited liability company, and its successors and assigns.

(k) "Declarant Control Period" has the meaning given to that term in Section 7.02 below.

(l) "Declaration" means the Declaration of Covenants, Conditions and Restrictions for Park Avenue Lofts Condominium, as the same may be amended from time to time.

(m) "Director" means a duly elected or appointed member of the Executive Board.

(n) "Executive Board" means the Association's board of directors.

(o) "General Common Elements" means all of the Condominium, other than the Units and the Limited Common Elements. Without limiting the generality of the preceding sentence, the General Common Elements include, without limitation:

(i) all Improvements, including, without limitation, the foundations, columns, girders, beams, supports, perimeter and supporting walls, utility systems, mechanical systems, sprinkler systems, exhaust and ventilation systems, storage

areas, roofs, chimneys, drainage facilities, patios, balconies, decks, porches, courtyards, stoops, exits and entrances, outdoor parking spaces and driveways, and indoor parking spaces, except for those Improvements that are designated by the Act, by the Declaration or by the Map as Units or Limited Common Elements; and

(ii) any parcel of real property and improvements and fixtures located thereon: (A) that are owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to the Declaration or a lease, license, easement or other agreement, and (B) that are used or possessed by the Association for the benefit of all Owners.

(p) "Guest" means any family member, employee, agent, independent contractor, lessee, customer or invitee of an Owner.

(q) "Improvement" means any building, structure or other improvement (including, without limitation, all fixtures and improvements contained therein) located on the Property and within which one or more Units or Common Elements are located.

(r) "Interest in General Common Elements" means the undivided interest in the General Common Elements appurtenant to each Unit which shall be expressed as a percentage and calculated in accordance with the following formula:

$$\text{Interest in General Common Elements} = \frac{(\text{Area of the Unit})}{(\text{Total Condominium Area})} \times 100$$

(s) "Limited Common Elements" means those portions of the Common Elements allocated by the Declaration or by operation of the Act for the exclusive use of one or more Units, but fewer than all of the Units. Without limiting the generality of the foregoing, "Limited Common Elements" include, without limitation:

(i) any shutters, awnings, window boxes, windows and doors located at the boundaries of Units, utility systems, mechanical systems, exhaust and ventilation systems, fireplaces, patios, balconies, decks, hot tubs, spas, porches, courtyards, elevators, waiting areas, libraries, laundry facilities, storage spaces, underground/indoor parking spaces as designated on the Map, ski lockers, restrooms, entrances, exits and walkways and other areas and Improvements that are designed to serve fewer than all of the Units;

(ii) any parcels of real property and improvements and fixtures located thereon: (A) that are owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to this Declaration or a lease, license, easement or other agreement, and (B) that are used or possessed by the Association for the benefit of Owners of fewer than all of the Units; and

(iii) any physical portion of the Condominium that is labeled on the Map as "Limited Common Element," "LCE," "LCER" or "LCEC."

If any chute, flue, duct, wire, conduit, bearing wall, bearing column or other structural component, any portion of a mechanical system or any fixture lies partially within and partially outside of the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated solely to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the General Common Elements. Nonstructural walls located wholly within a Unit are Limited Common Elements appurtenant to the Unit in which they are located.

(f) "Map" means the condominium map for Park Avenue Lofts Condominium as described in the Declaration, as the same may be amended or supplemented from time to time.

(u) "Membership" means a membership in the Association and the rights granted to Owners pursuant to the Association Documents to participate in the Association.

(v) "Officer" means a duly elected or appointed officer of the Association.

(w) "Owner" means the record holder of legal title to the fee simple interest in any Unit or portion thereof. If there is more than one record holder of legal title to a Unit, each record holder shall be an Owner. The term "Owner" includes Declarant to the extent that Declarant is the record holder of legal title to the fee simple interest in a Unit.

(x) "Person" means any natural person, corporation, partnership, limited liability company, association trust, trustee, governmental or quasi-governmental entity or any other entity capable of owning real property under the laws of the State of Colorado.

(y) "Property" means the real property located in Summit County, Colorado, that is more particularly described on Exhibit A attached to the Declaration, and any real property that is later made subject to the Declaration in accordance with the terms and conditions contained in the Declaration.

(z) "Purchaser" means a Person, other than Declarant or a Successor Declarant, who acquires legal title to the fee simple interest in any Unit or portion thereof.

(aa) "Residential Unit" means any Unit, other than a Commercial Unit.

(bb) "Rules and Regulations" means any instruments adopted by the Association for the regulation and management of the Condominium, as the same may be amended from time to time.

(cc) "Special Declarant Rights" means all the "special declarant rights" (as such term is defined in the Act) that Declarant reserves for itself in the Declaration.

(dd) "Successor Declarant" means any Person who succeeds to any Special Declarant Right.

(ee) "Summit County Records" means the records of the Office of the Clerk and Recorder for Summit County, Colorado.

(ff) "Total Condominium Area" means the Area of all Units in the Condominium, as determined in accordance with paragraph 4.01(b) above.

(gg) "Unit" means a physical portion of the Condominium that (i) is created by the Declaration, (ii) is designated for separate ownership, and (iii) has boundaries that are described in the Declaration or shown on the Map; together with (iv) the Interest in General Common Elements appurtenant to that Unit; (v) the right to the exclusive or nonexclusive use of the Limited Common Elements appurtenant to that Unit, if any; and (vi) the Membership in the Association appurtenant to that Unit.

If walls, floors or ceilings are designated as boundaries of a Unit, all paneling, tiles, wallpaper, painting, finished flooring, and any other materials constituting any portion of the finished surfaces thereof are part of the Unit, and all other portions of the walls, floors and ceilings are part of the Common Elements.

#### 4.02 Other Definitions.

Any capitalized terms used in these Articles that are not defined in Section 4.01 above shall have the meanings given to them in the Declaration.

### ARTICLE V MEMBERSHIP AND VOTING

#### 5.01 Membership.

(a) There shall be one Membership appurtenant to each Unit. The Membership appurtenant to a Unit shall be held by the Owners of that Unit and may not be separated from the Unit to which it is appurtenant. A Membership may be transferred or encumbered only in connection with the conveyance or encumbrance of a fee simple interest in the Unit to which such Membership is appurtenant. Any transfer or encumbrance of a Membership, other than as permitted in this Section 5.01, shall be void and have no force or effect.

(b) Notwithstanding anything to the contrary contained in paragraph 5.01(a) above, an Owner may assign its voting rights to any Person by a duly executed proxy timely delivered to the Association.

5.02 Voting.

(a) The total number of votes allocated to Memberships appurtenant to the Units shall be set forth in the Articles and shall be allocated among the initial Memberships as follows:

(i) each Membership appurtenant to a Residential Unit shall be entitled to one vote, and

(ii) each Membership appurtenant to a Commercial Unit shall be entitled to the number of votes calculated as follows:

$$\begin{array}{l} \text{Number} \\ \text{of} \\ \text{Votes} \end{array} = 10 \times \frac{\text{(Area of the Commercial Unit)}}{\text{(Aggregate Area of all Units)}}$$

(b) If any Units are added to or withdrawn from the Condominium, or the Area of one or more Commercial Units is increased or decreased, the total number of votes allocated to all Memberships and the allocation thereof after such addition, withdrawal, increase or decrease shall be recalculated as follows:

(i) each Membership appurtenant to a Residential Unit shall be entitled to one vote; and

(ii) each Membership appurtenant to a Commercial Unit shall be entitled to the number of votes equal to the product obtained by multiplying (A) the quotient obtained by dividing (I) the Area of that Commercial Unit, by (II) the Area of all Commercial Units, by (B) a factor equal to 51 percent of the then current number of Residential Units, it being the intent hereof to provide to the holders of Memberships appurtenant to Commercial Units the ability to elect one-third of the Directors to the Executive Board after the expiration of the Declarant Control Period.

(c) Each Membership shall be entitled to the number of votes allocated to it in accordance with paragraphs 5.02(a) and (b) above, regardless of the number of Owners of the Unit to which the Membership is appurtenant. Fractional voting shall be allowed for Memberships appurtenant to Commercial Units, but shall not be allowed for Memberships appurtenant to Residential Units. If the Owners of a Residential Unit cannot agree among themselves as to how to cast their votes on a particular matter, they shall lose their right to vote on such matter. If any Owner casts a vote representing a Membership appurtenant to a particular Residential Unit, it will thereafter be presumed for all purposes that the Owner was acting with the authority and consent of all other Owners with whom such Owner shares the Membership, unless objection thereto is made by an Owner of that Residential Unit to the Person presiding over the meeting at the time the vote is cast. If more than the number of allocated votes are cast for any particular Membership, none of such votes shall be counted and all of such votes shall be deemed null and void.

(d) Only the Owners of the Commercial Units may vote as to those matters concerning only Commercial Units, and only the Owners of the Residential Units may vote as to those matters concerning only Residential Units. All members shall vote on matters concerning both Commercial Units and Residential Units and matters that cannot be clearly categorized as affecting only Commercial Units or Residential Units exclusively.

(e) The Association shall have no voting rights for any Membership appurtenant to any Unit owned by the Association.

## ARTICLE VI PURPOSES AND POWERS

### 6.01 Purposes.

The Association's purposes are:

- (a) to manage, operate, insure, improve, repair, replace, alter and maintain the Common Elements;
- (b) to provide certain facilities, services and other benefits to the Owners;
- (c) to administer and enforce the covenants, conditions, restrictions, reservations and easements created by the Declaration;
- (d) to levy, collect and enforce the assessments, charges and liens imposed pursuant to the Declaration;
- (e) to enter into agreements with other Persons, including, without limitation, easements, licenses, leases and other agreements for facilities and services that serve the Association;
- (f) to take any action that it deems necessary or appropriate to protect the interests and general welfare of Owners; and
- (g) to regulate and manage the Condominiums.

### 6.02 Powers.

(a) Unless expressly prohibited by law or any of the Association Documents, the Association may (i) take any and all actions that it deems necessary or advisable to fulfill its purposes; (ii) exercise any powers conferred on it by the Act or any Association Document; and (iii) exercise all powers that may be exercised in Colorado by nonprofit corporations.

(b) Without in any way limiting the generality of paragraph 6.02(a) above, the Association may, but is not obligated to:

(i) provide certain facilities and services to the Owners, such as (A) recreational facilities and services; (B) water, sewer, gas, electric, cable television, and other utility services; (C) parking facilities; and (D) trash collection facilities and services;

(ii) acquire, sell, lease and grant easements over, across and through Common Elements;

(iii) borrow monies and grant security interests in the Common Elements and in the assets of the Association as collateral therefor;

(iv) make capital improvements, repairs and replacements to the Common Elements; and

(v) hire and terminate managing agents and other employees, agents and independent contractors.

6.03 Restrictions on Purposes and Powers.

The purposes and powers of the Association described in Sections 6.01 and 6.02 above are subject to the following limitations:

(a) The Association shall be organized and operated exclusively for nonprofit purposes as set forth in Section 528 of the Internal Revenue Code of 1986, as amended, or in any corresponding provision of any future law of the United States of America providing for exemption of similar organizations from income taxation.

(b) No part of the net earnings of the Association shall inure to the benefit of any Owner, except as expressly permitted in paragraph 6.03(e) below with respect to the dissolution of the Association.

(c) The Association shall not pay any dividends. No distribution of the Association's assets to Owners shall be made until all of the Association's debts are paid, and then only upon the final dissolution of the Association as permitted in the Declaration. Upon payment of all of the Association's debts and final dissolution, any remaining assets of the Association shall be distributed among the Owners in accordance with the terms and conditions of the Act.

**ARTICLE VII  
EXECUTIVE BOARD**

7.01 Executive Board.

(a) The business and affairs of the Association shall be controlled, conducted and managed by the Executive Board except as otherwise provided in the Colorado Revised Nonprofit Corporation Act, the Declaration, these Articles or the Bylaws.



(b) Except as provided by law or in the Declaration, these Articles or the Bylaws, the Executive Board may act on behalf of the Association in all instances. The Executive Board may not however, act on behalf of the Association to (i) amend the Declaration; (ii) terminate the Association, the Declaration or the Condominium; (iii) elect Directors to the Executive Board, other than to fill a vacancy for the unexpired portion of any Director's term, subject to Declarant's rights under Section 7.02 below; or (iv) determine the qualifications, powers and duties, or terms of office, of Directors.

(c) The Executive Board shall consist of not less than three and no more than seven Directors. The names and addresses of the initial Directors are as follows:

<u>Name</u>	<u>Address</u>
David Kaiser	5304 Devon Avenue Chicago, IL 60646
Steve Siegel	5304 Devon Avenue Chicago, IL 60646
Michael D. Madsen	P.O. Box 1640 Breckenridge, CO 80424

(d) Cumulative Voting.

(i) In any election of Directors to the Executive Board, each Membership shall be entitled to the number of votes that is equal to the product obtained by multiplying: (i) the number of votes allocated to that membership in accordance with paragraphs 3.02(a) and (b) above, by (ii) the number of Directors to be elected.

(ii) Cumulative voting shall be allowed in the election of Directors to the Executive Board, but for no other purpose. Under cumulative voting, an Owner may cast all of the votes allocated to its Membership in an election of Directors for a single Director position, or otherwise distribute those votes among the candidates for Director positions in any manner the Owner desires. As a result, if the holders of all initial Memberships appurtenant to Commercial Units cast all of their votes for a single Director, such holders shall have the ability to elect one Director to the Executive Board.

7.02 Declarant Control Period.

(a) Subject to the terms and conditions of paragraphs 7.02(b) and (c) below, but notwithstanding anything else to the contrary contained in these Articles or in any other Association Document, Declarant shall have the exclusive right to appoint and remove all Directors and Officers during the Declarant Control Period. The phrase "Declarant Control Period" means the period commencing on the date hereof and ending on the earliest to occur of:

without limitation, all legal fees, costs, and expert witness fees incurred from the time the claim accrues until resolution thereof.

**ARTICLE IX  
BYLAWS**

The initial Bylaws of the Association shall be adopted by the Executive Board. The Executive Board shall have the power to alter, amend or repeal the Bylaws from time to time and to adopt new Bylaws. The Bylaws of the Association may contain any provisions for the regulation or management of the affairs of the Association that are not inconsistent with law, the Declaration or these Articles.

**ARTICLE X  
AMENDMENT**

The Association may amend, alter, change or repeal any provision contained in these Articles by, unless a higher voting requirement is set forth herein with respect to any particular provisions, the vote of the holders of at least 67 percent of the votes allocated to all Memberships at any regular or special meeting called for that purpose at which a quorum is represented. The Association's right to amend, alter, change or repeal these Articles is subject to the limitations thereon set forth in the Declaration.

**ARTICLE XI  
INCORPORATOR**

The name and address of the incorporator is:

Mark D. Thompson  
P.O. Box 588  
Breckenridge, CO 80424



Mark D. Thompson  
Incorporator

20011065570  
 APPLICATION FOR REINSTATEMENT  
 FOR A COLORADO NONPROFIT CORPORATION

Form 395 Revised October 1, 2002

Filing fee: \$100.00

Deliver to: Colorado Secretary of State  
 Business Division, 1560 Broadway, Suite 200  
 Denver, CO 80202-5169

This document must be typed or machine printed.

Copies of filed documents may be obtained at [www.sos.state.co.us](http://www.sos.state.co.us)

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\$ 100.00

SECRETARY OF STATE  
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Pursuant to § 7-134-203 and part 3 of article 90 of title 7, Colorado Revised Statutes (C.R.S.), this application for reinstatement is delivered to the Colorado Secretary of State for filing.

1. The name of the nonprofit corporation at the time of dissolution: Park Avenue Lofts Condominium Association, Inc.
2. This entity was formed under the jurisdiction of Colorado.
3. The effective date of administrative dissolution: January 1, 2003
4. The new entity name, pursuant to § 7-90-501(3)(b), under which the corporation is to be reinstated (applicable only if the corporate name at the time of dissolution is no longer available): \_\_\_\_\_
5. The name of the registered agent: Mark D. Thompson  
 The street address of the registered agent in Colorado: 100 S. Ridge Street, Suite 204, Breckenridge, CO 80424  
 If mail is undeliverable at this address, include PO Box address: P.O. Box 588, Breckenridge, CO 80424
6. The address of the entity's principal office: 500 S. Park Avenue, Breckenridge, CO 80424
7. The ground(s) for dissolution either did not exist or have been eliminated.
8. All taxes, fees, or penalties imposed by Title 7, Articles 121 to 134, C.R.S., have been paid.
9. 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: Mark D. Thompson, P.O. Box 588, Breckenridge, CO 80424

*Causing a document to be delivered to the secretary of state for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed or the act and deed of the entity on whose behalf the individual is causing the document to be delivered for filing and that the facts stated in the document are true.*

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