

*[Comments from Marc Rochkind are shown bracketed, italicized, and in a sans-serif font, like this paragraph.]*

*[The Bylaws use a sans-serif font, and the Articles use a serif font. They should both use the same style.]*

## **AMENDED AND RESTATED**

### **ARTICLES OF INCORPORATION FOR GUNBARREL GREEN HOMEOWNERS ASSOCIATION, INC.**

The Gunbarrel Green Homeowners Association hereby delivers to the Secretary of State of Colorado these Amended and Restated Articles of Incorporation.

#### **RECITALS**

The Gunbarrel Green Homeowners Association certifies to the Secretary of State of Colorado that:

These Amended and Restated Articles of Incorporation were approved by at least sixty percent (60%) of the Members with voting rights of Gunbarrel Green Homeowners Association.

These Amended and Restated Articles of Incorporation replace any previous Articles of Incorporation as amended.

These **Articles of Incorporation** are to be interpreted as being in accordance with the Colorado Revised Nonprofit Corporation Act, C.R.S. §§ 7- 121-101 et seq., as applicable.

*[Two terms are used: “Articles of Incorporation” and “Amended and Restated Articles of Incorporation”. The paragraph just above may be using the wrong term.]*

*[“ARTICLE I. Definitions” should be moved from the Bylaws to here. See the comment in the Bylaws for my reasoning.]*

#### **ARTICLE I. Name**

The name of the corporation is GUNBARREL GREEN HOMEOWNERS ASSOCIATION, INC., hereinafter referred to as “the Association.”

#### **ARTICLE II. Registered Office and Registered Agent**

The address of the registered office and the name of the registered agent at the time of the adoption of these Amended and Restated Articles of Incorporation are:

Registered Agent: Gina Hyatt  
Registered Office: 5098 Cottonwood Drive  
Boulder, Colorado 80301

The name of the registered agent and registered address are updated annually with the Colorado Secretary of State and are available from the Secretary of State.

### **ARTICLE III. Purpose and Powers of the Association**

This Association does not contemplate pecuniary gain or profit to the Members thereof. The purposes for which the Association is formed are: to promote the health, safety, and welfare of the residents and owners of property within Gunbarrel Green, a subdivision of the County of Boulder, State of Colorado, hereinafter referred to as “the properties” and legally described as:

The following lots in Gunbarrel Green as shown on the plat thereof recorded in the office of the County Clerk and Recorder of the County of Boulder and State of Colorado in plat Book 9 at Pages 46, 47, and 48,

The following lots in Gunbarrel Green as shown on the plat thereof recorded in the office of the County Clerk and Recorder of the County of Boulder and State of Colorado in Plat Book 9 at Pages 46, 47, and 48, including Replat of Blocks 20 & 21 (July 30, 1964), Plan File R-1-2-11, and partial release & revocation of restrictions, covenants and conditions (July 12, 1966), File 575, Reception 820807 (East View). The following lots are included in the HOA as of the date of these Amended and Restated Articles of Incorporation.

Block 5	Lots 1 thru 8
Block 6	Lots 1 thru 11
Block 10	Lots 1 thru 10 and 12 & 13
Block 19	Lots 1 thru 4, 6 thru 28 and 29C
Replat of Blocks 20 & 21 (no block number) -	Lots 1 thru 29
Block 22	Lots 1A, 2 thru 9 and 10A
Block 23	Lots 1 thru 6
Block 33	Lots 2 thru 5
Block 34	Lots 2 thru 11, Lots 1B, 2B & 3B, Lots 18 thru 22, Lots 24 thru 35
Block 35	Lots 1 thru 11
Block 36	Lots 1 thru 6
Block 37	Lots 2 thru 42
Block 38	Lots 1 thru 16
Block 39	Lots 1 thru 28
Block 40	Lots 1 thru 14
Block 41	Lots 1A, 2A, 3, 4 and 6 thru 47
Block 42	Lots 1 thru 9

*[This list of Blocks and Lots is different from what the existing Articles say. Are any properties in the Association via this change that were not in it previously? If so, are those properties members of the HOA without agreeing? Also, which of the two lists do the Covenants apply to?]*

- A. 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;

and to represent the residential community which is known as Gunbarrel Green, and, subject to the restrictions contained in Article X hereof, to:

- B. Exercise all of the powers and privileges and perform all of the duties and obligations of the Association set forth in that certain declaration of restrictions, covenants, and conditions covering certain lots in Gunbarrel Green, hereinafter referred to as the "Declaration," applicable to the properties and recorded against the properties on July 26, 1963 at 2:20 p.m., Reception no. 732360, Book 1292, Page 312 in the records of the Boulder County Clerk and Recorder, Boulder, Colorado as modified by amendments recorded against the properties on March 16, 1967, Film no. 579, Reception no. 841740 and on April 2, 1970, Film no. 695, Reception no. 939708, and as the same may be further amended from time to time as therein provided, said Declaration and its amendments being incorporated herein as if set forth in full; plan and develop goals and objectives to maintain and enhance the quality of life of the Gunbarrel Green community, and interface with all elements of government of Boulder County and the City of Boulder and any and all other entities to achieve the objectives;
- C. fix, levy, collect and enforce payment by any lawful means Dues, Fees and Assessments; pay all expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the Association;

*[Dues, Fees and Assessments need to be defined in this document; see above.]*

- D. borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- E. participate in mergers and consolidations with other nonprofit corporations organized for the same purpose or annex additional residential property and common areas;
- F. sue and be sued to enforce any and all covenants, restrictions and agreements legally applicable to the properties; and
- G. have and exercise any and all other powers, rights and privileges which a corporation organized under the nonprofit corporation law of the State of Colorado by law may now or hereafter have or exercise, and do any and all other lawful thing that will, in the

opinion of the Board of Directors, promote the common benefit and enjoyment of the residents of the properties.

#### **ARTICLE IV. Membership**

Every person or entity who is a record owner of a fee or undivided fee interest in any land, lot or living unit which is or may be subject to the terms of the declaration of restrictions, covenants and conditions covering certain lots in Gunbarrel Green, recorded July 26, 1963 at 2:20 p.m., Reception no. 732360, in Book 1292, Page 312, and any amendments thereto of record in the records of the Clerk and Recorder of the County of Boulder, State of Colorado, shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a 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 property which is subject to assessment by the Association.

#### **ARTICLE V. Voting Rights**

Each Member in good standing as defined in the Bylaws shall be entitled to one vote for each lot owned.

*[Need consistent terminology. Terms "Bylaws" and "Bylaws of this Association" are used in this document.]*

In no event shall more than one vote be cast with respect to any such lot or living unit.

The vote for each such lot where ownership is held by more than one owner may be exercised by any person or entity holding record title unless an objection or protest by any other holder of an interest in the same property is made prior to the completion of the vote. In such case, the vote for such lot will be exercised in any manner the persons holding such record interest shall determine between themselves within a reasonable time. Should the joint owners of any lot be unable, within a reasonable time, to agree upon how they will vote on any issue, they shall be passed over and their right to vote on such issue shall be lost. Such determination shall be made by the person or officer of this corporation chairing the meeting at the time of such vote and such determination shall be final and not subject to appeal or litigation.

#### **ARTICLE VI. Board of Directors**

The affairs of this Association shall be managed by a Board of five (5) Directors. The number of Directors may be changed by amendment of the Bylaws of this Association.

*[Confusing way to put it, since Articles controls over Bylaws. Better to just let it be defined in the Bylaws.]*

Directors shall serve for three (3) year terms, except when completing the remainder of a vacant position. Directors shall serve staggered terms to balance continuity with new perspective. Accordingly, the Directors shall be divided, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as is reasonably possible, with the term of office of the first class (Class I) to expire at the first annual meeting of Members held following the effective date of these **Amended and Restated Articles**, the term of office of the second class (Class II) to expire at the second annual meeting of Members held following the effective date of these **Amended and Restated Articles**, and the term of office of the third class (Class III) to expire at the third annual meeting of Members held following the effective date of these **Amended and Restated Articles**, with each Director to hold office until his or her successor shall have been duly elected and qualified unless earlier removed.

*["Amended and Restated Articles" should be "Amended and Restated Articles of Incorporation" to be consistent with earlier usages.]*

At each annual meeting of Members, commencing with the first annual meeting of Members held following the effective date of these **Articles**, (i) Directors elected to succeed those Directors whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of Members after their election, with each Director to hold office until his or her successor shall have been duly elected and qualified unless earlier removed, and (ii) if authorized by a resolution of the Board of Directors, Directors may be elected to fill any vacancy on the Board of Directors, regardless of how such vacancy shall have been created.

[Is it "Articles of Incorporation" or "Amended and Restated Articles of Incorporation"?

**Section 1. Powers.** The Board of Directors shall have the powers:

- (a) to establish the goals and objectives to improve the quality of life for the entire community of Gunbarrel Green and the surrounding environs; and to develop plans, both short and long range, to achieve these goals; and to maintain continuous liaison with the Boulder County Planning Commission, Boulder County Commissioners, City of Boulder Planning Board, the Boulder City Council, and any and all other organizations as may be appropriate;
- (b) to administer and enforce the covenants, conditions, restrictions, easements, uses, limitations, obligations and all other provisions set forth in the declaration, and all amendments thereto;
- (c) to exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of the Bylaws, the **Articles of Incorporation**, or the Declaration, and all amendments thereto;

*[Should it be "Amended and Restated Articles of Incorporation"?)*

- (d) to declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors;
- (e) to provide for such other expenses together with the establishment of necessary reserves, as are required by the declaration or as deemed appropriate by the Board;
- (f) to procure and maintain such insurance policies as the Board deems necessary or advisable;
- (g) to institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of the Association or any Member or to enjoin or seek damages from a Member for violation of the provisions of the declaration;
- (h) to cause all officers to be bonded;
- (i) to make contracts and incur liabilities;
- (j) to borrow money, providing such security as is necessary;

*[Conflicts with ARTICLE X, which requires 60% of members to borrow. These sorts of conflicts need to be removed.]*

- (k) to employ such independent contractors as they may deem necessary and to prescribe the duties of such independent contractors; and
- (l) to exercise any other powers conferred by the Declaration, Articles or Bylaws.

*[Term "Articles" hasn't been defined. Should probably be "Amended and Restated Articles of Incorporation".]*

*[New power should be added, something like: "To collect Fees, not to exceed \$25." Note that I'm recommending that the definition of Fees be changed and moved to the Articles. See my comments in Article I of the Bylaws.]*

**Section 2. Duties.** It shall be the duty of the Board of Directors:

- (a) to cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members or at any special meeting when such complete record is requested in writing by one-tenth of the Members with voting rights as provided herein;  
*[Add after the word "herein": ", except that all such records produced after August, 2018, shall be available online within 10 days of their creation and shall be accessible by the public".]*

- (b) to supervise the officers of the Association, and to see that their duties are properly performed; and
- (c) to evaluate and recommend the amount of Fees, Dues or Assessments against each Member or each property for each Assessment period at least thirty (30) days in advance of such due date or period and to send a written notice of each such Dues or Assessments to every Member subject thereto.

*[Sounds like the Board can recommend an amount and then send a written notice, without the intermediate step of holding a vote, as specified elsewhere. Needs to be reworded.]*

**Section 3. Removal.** Any Director may be removed from the Board, by a majority vote of the Members of the Association, with or without cause, and a successor elected to serve the remainder of the term of the Director so removed.

*[Need to specify how elected. I suggest that the phrase “and a successor... removed” be replaced by this sentence: “The resulting vacancy shall be filled as stated in the Bylaws of this Association”.*

#### **ARTICLE VII. Architectural Committee**

The Board of Directors shall designate an architectural committee, consisting of not less than three (3) persons, which shall perform the duties defined in that certain declaration of restrictions, covenants and conditions covering certain lots in Gunbarrel Green, recorded July 26, 1963 at 2:20 p.m., Reception no. 732360, in book 1292, Page 312, and any amendments thereto of record, in the records of the Clerk and Recorder of the County of Boulder, State of Colorado.

#### **ARTICLE VIII. Amendments**

Amendment of these articles will require an affirmative vote of at least sixty percent (60%) of the Members with voting rights.

#### **ARTICLE IX. Dissolution**

Dissolution of the Association will require an affirmative vote of at least sixty percent (60%) of the Members with voting rights.

Upon dissolution of the Association, other than as incident to a merger or consolidation, the assets of the Association shall be granted, conveyed and assigned as follows:

- A. First, to pay all creditor obligations;

- B. Then, to repay each Member for Dues and Assessments he or she paid in, starting with the current year and working back in time, until the remaining assets are insufficient to repay the full Dues and Assessments for a year, in which case, the distribution shall be on a pro rata basis for that year.

*[Not clear whether payments by previous owner are to be refunded to current owner.]*

#### **ARTICLE X. Prior Approvals**

The following actions will require an affirmative vote of at least of sixty percent (60%) of Members with voting rights:

- A. purchase or acquire real property.
- B. participate in mergers and consolidations with other nonprofit corporations organized for the same purpose or annex additional residential property and common areas.
- C. borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.
- D. levy Assessments.
- E. increase dues

*[This should be restored, as voting for a dues increase as specified in the proposed Bylaws is subject to abuse.]*

- F. increase Fees

*[New paragraph.]*

#### **ARTICLE XI. Quorum**

Unless otherwise provided in these Articles of Incorporation or in the Bylaws of this Association any business to be conducted by the membership may be conducted by a ~~majority~~ ~~vote~~ at any meeting where a quorum is present. Quorum is as defined in the Bylaws.

*[“Articles of Incorporation” should probably be “Amended and Restated Articles of Incorporation”.]*

*[Confusing, since certain votes require a super-majority, or should; better to avoid referring to the specific requirements for the vote. Also, seems to suggest that there are circumstances when Bylaws are controlling, which is opposite to what is stated in Bylaws. I*



*suggest that "by a majority vote at" be deleted, as that phrase is in the Bylaws.]*

**ARTICLE XII. Duration**

The corporation shall exist perpetually.

**ARTICLE XIII. Incorporators**

The name and address of the incorporators are:

Don Babcock	6898 Harvest Road Boulder, Colorado 80301
J.R. Christopher	6915 Cordwood Court Boulder, Colorado 80301
Gary W. Collins	5259 Idylwild Trail Boulder, Colorado 80301
Betty Cox	6919 Hunter Place Boulder, Colorado 80301
Donald Duft	5078 Cottonwood Drive Boulder, Colorado 80301
Gina Hyatt	5098 Cottonwood Drive Boulder, Colorado 80301
Douglas Jensen	6889 Roaring Fork Trail Boulder, Colorado 80301
Sandi Misura	7061 Indian Peaks Trail Boulder, Colorado 80301
Betty Stanley	7050 Roaring Fork Trail Boulder, Colorado 80301
Allen Sunset	4812 Tanglewood Trail Boulder, Colorado 80301

IN WITNESS WHEREOF, the undersigned have signed these Amended and Restated Articles of Incorporation this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

GUNBARREL GREEN HOMEOWNERS ASSOCIATION, INC., a Colorado nonprofit corporation

By \_\_\_\_\_

Janet Reutcke, President

---

Gina Hyatt, Registered Agent