



STATE OF COLORADO

DEPARTMENT OF
STATE

CERTIFICATE

I, **NATALIE MEYER**, Secretary of State of the State of Colorado hereby certify that the prerequisites for the issuance of this certificate have been fulfilled in compliance with law and are found to conform to law.

Accordingly, the undersigned, by virtue of the authority vested in me by law, hereby issues **A RESTATED CERTIFICATE OF INCORPORATION WITH AMENDMENTS TO THE BEAVER CREEK CONDOMINIUM ASSOCIATION, A NONPROFIT CORPORATION.**

Dated: **DECEMBER 28, 1990**


SECRETARY OF STATE

FORM D2 NP (Rev. 7/90)
omit in duplicate
\$10.00

document must be typewritten

MAIL TO:
COLORADO SECRETARY OF STATE
CORPORATIONS OFFICE
1560 Broadway, Suite 200
Denver, Colorado 80202
(303) 894-2251

AMENDED AND RESTATED
~~ARTICLES OF INCORPORATION~~
TO THE
ARTICLES OF INCORPORATION

for office use only

12-28-90 11:14
901110389 \$20.00

NONPROFIT

AMENDED AND RESTATED

DN 9:1099092

Pursuant to the provisions of the Colorado Nonprofit Corporation Act, the undersigned corporation adopts the following articles of Amendments to its Articles of Incorporation:

FIRST: The name of the corporation is The Beaver Creek Lodge Condominium Association, Inc. (NOTE 1)

SECOND: The following amendment of the Articles of Incorporation was adopted on the 6th day of November 19 90, in the manner prescribed by the Colorado Nonprofit Corporation Act, according to the procedure marked with an X below:

a quorum of members was present at such meeting, and the amendment received at least two-thirds of the votes which members present or represented by proxy were entitled to cast.

such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

there are no members, or no members entitled to vote thereon, such amendment received the vote of a majority of the directors in office. At the organizational meeting of the Board of Directors held at 8:30 A. M. on November 6, 1990, at the offices of Warner Developments, Inc., 20 Eagle Road, Avon, CO 81620.

THIRD: Except as amended hereby, these Amended and Restated Articles of Incorporation correctly set forth the provisions of the Articles of Incorporation certified by the Colorado Secretary of State on October 31, 1990, they have been duly adopted in accordance with the laws of the State of Colorado, and they supercede the original Articles of Incorporation and all Amendments Thereto.

FOURTH: Attached hereto and made a part hereof are the Amended and Restated Articles of Incorporation of The Beaver Creek Lodge Condominium Association, Inc.

Its [Signature] President

and Deborah G. Wittman
Its Assistant Secretary

COMPUTER UPDATE COMPLETE
ARB

Note (1) If this is a change of name amendment, the name to be typed in PARAGRAPH FIRST is the corporate name before this amendment is filed.

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
THE BEAVER CREEK LODGE
CONDOMINIUM ASSOCIATION, INC.

For the purpose of forming a nonprofit corporation pursuant to the provisions of the Colorado Nonprofit Corporation Act, the undersigned hereby has made, signed and acknowledged the following Articles of Incorporation:

ARTICLE I

Name

The name of the corporation shall be: THE BEAVER CREEK LODGE CONDOMINIUM ASSOCIATION, INC.

ARTICLE II

Duration

The period of duration of this corporation shall be perpetual.

ARTICLE III

Purposes

The business, objectives and purposes for which the corporation is formed are as follows:

A. To be and constitute the Association to which reference is made in the Amended and Restated Declaration of Covenants, Conditions and Restrictions of The Beaver Creek Lodge Condominiums, recorded October 12, 1990 in Book 539 at Page 949 in the office of the Clerk and Recorder of the County of Eagle, State of Colorado (the "Declaration"), relating to a condominium ownership project described therein (herein sometimes called the "Condominium Project") in the County of Eagle, State of Colorado, and to perform all obligations and duties of the Association and to exercise all rights and powers of the Association, as specified therein. Terms which are defined in the Declaration shall have the same meanings herein, unless otherwise defined herein.

B. To provide an entity for the furtherance of the interests of the Owners of the Condominium Project.

ARTICLE IV

Powers

In furtherance of its purposes, but not otherwise, the corporation shall have the following powers:

A. All of the powers conferred upon nonprofit corporations by the common law and the statutes of the State of Colorado in effect from time to time.

B. 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, including, without limitation, the following powers:

1. To make and collect assessments against Owners for the purpose of paying the costs, expenses and any losses of the corporation, or of exercising its powers or of performing its functions, in accordance with the provisions and limitations set forth in the Declaration;

2. to manage, control, operate, maintain, repair and improve the Common Elements, including, without limitation, locker rooms, ski lockers, swimming pool, sauna and steam room;

3. to enforce covenants, restrictions and conditions affecting the Property to the extent this corporation may be authorized under any such covenants, restrictions or conditions and to make and enforce rules and regulations for use of property in the Condominium Project;

4. to engage in activities which will actively foster, promote and advance the common ownership interests of the Owners;

5. subject to the Declaration and Bylaws of this corporation (herein sometimes called the "Bylaws") to buy or otherwise acquire, sell or otherwise dispose of, mortgage or otherwise encumber, exchange, lease, hold, use, operate and otherwise deal with and in, real, personal and mixed property of all kinds, and any right or interest therein, for any purpose of this corporation;

6. to borrow money and secure the repayment of monies borrowed for any purpose of this corporation, limited in amount or in other respects as may be provided in the Bylaws or in the Declaration;

7. to enter into, make, perform or enforce contracts of every kind and description, including, without limitation, a contract for management services, and to do all other acts necessary, appropriate or advisable in carrying out any purpose of this corporation, with or in association with any person, firm,

association, corporation or other entity or agency, public or private;

8. to act as agent, trustee or other representative of other corporations, firms and individuals and as such to advance the business or ownership interests of such corporations, firms or individuals; and

9. to adopt, alter, and amend or repeal such Bylaws as may be necessary or desirable for the proper management of the affairs of this corporation, provided, however, that such Bylaws may not be inconsistent with or contrary to any provisions of these Articles of Incorporation or the Declaration.

The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other and further rights and powers which may now or hereafter be allowed or permitted by law; and the powers specified in each of the paragraphs of this Article IV are independent powers, not to be restricted by reference to or inference from the terms of any other paragraph or provisions of this Article IV.

ARTICLE V

Memberships

This corporation shall be a membership corporation without certificates or shares of stock. There shall be one class of membership, and there shall be one membership in the corporation for each Owner.

All members shall be entitled to vote on all matters, with one vote per Condominium Unit (which votes shall be weighted according to the appropriate percentage interest in the Common Elements if voting is to be based upon such percentages). Cumulative voting is prohibited. If title to any Condominium Unit shall be held by two or more Persons, then each such Person shall be a member of this corporation, but the voting rights of such Owners shall not be divided but shall be exercised as if the Owner consisted of only one Person in accordance with the proxy or other designation made by the Persons constituting such Owner. The Declarant may exercise the voting rights with respect to Condominium Units owned by it. In no instance shall any Condominium Unit have more than one vote on any question or issue (which vote shall be weighted according to the appropriate percentage interest in the Common Elements if voting is to be based upon such percentages). No person other than an Owner may be a regular member of the corporation.

A membership in the corporation and the share of a member in the assets of the corporation shall not be assigned, encumbered or

transferred in any manner except as an appurtenance to transfer of title to the Condominium Unit to which the membership pertains, provided, however, that the rights of membership may be assigned to the holder of a First Mortgage as further security for a loan secured by a lien on such Condominium Unit.

A transfer of membership shall occur automatically upon the transfer of title to the Condominium Unit to which the membership pertains, provided, however, that the Bylaws of the corporation may contain reasonable provisions and requirements with respect to recording such transfers on the books and records of the corporation.

The corporation may suspend the voting rights of an Owner and such Owner's Guests for failure to pay any assessment or for failure to otherwise comply with the rules and regulations or the Bylaws of the corporation or with any other obligations of the Owners under the Declaration, or agreement(s) created pursuant thereto.

The Bylaws may contain provisions, not inconsistent with the foregoing, setting forth the rights, privileges, duties and responsibilities of the members.

ARTICLE VI

Board of Directors

The business and affairs of the corporation shall be conducted, managed and controlled by a Board of Directors.

The Board of Directors shall consist of not less than five nor more than ten members, the specified number to be set forth from time to time in the Bylaws. In the absence of any provision in the Bylaws, the Board shall consist of five members. In all events, however, the terms of at least one-fifth of the members of the Board shall expire annually.

Notwithstanding anything to the contrary contained herein, from and after the date that the members of the Board of Directors are no longer appointed by Declarant, no less than one member of the Board shall be an Owner of Commercial Unit(s), one shall be an Owner of Residential Unit(s), and no less than three shall be Owners of Hotel Units, the Restaurant Unit, the Grantor Unit, the Office Unit and/or The Managers Unit or their representatives. The provisions of the preceding sentence may be amended only with the consent of the Owners of Condominium Units representing 85% or more of the Common Elements.

Members of the Board of Directors shall be elected in the manner determined by the Bylaws. All persons comprising the Board of Directors shall be Owners, except as provided herein, in the Declaration or Bylaws.

Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided in the Bylaws.

The initial Board of Directors shall consist of five persons who shall serve until their successors are duly elected and qualified. The names, addresses and terms of the members of the initial Board of Directors are as follows:

<u>Name</u>	<u>Address</u>	<u>Term</u>
Deborah W. Warner	P. O. Box 958 Avon, Colorado 81620	three years
Robert Warner, Jr.	P. O. Box 958 Avon, Colorado 81620	three years
Gary G. Marner	P. O. Box 958 Avon, Colorado 81620	one year
Bo Nilsson	Nine Benedict Place Greenwich, CT 06830	two years
Deborah G. Wittman	P. O. Box 958 Avon, Colorado 81620	two years

Any vacancies on the Board of Directors occurring before the first election of directors by Owners shall be filled by the remaining directors.

Notwithstanding anything to the contrary provided for herein, however, until four (4) months after the Declarant has conveyed 75% of the Condominium Units in the Condominium Project, or September 1, 1994, whichever first occurs, the members of the Board of Directors shall be appointed by Declarant, its successors or assigns, unless such right is relinquished earlier.

None of the members of the Board of Directors shall be personally liable to the Association or to Owners, or any of them, for monetary damages for breach of fiduciary duty as a member of the Board of Directors; except that the foregoing shall not eliminate or limit the liability of a director to the Association or to the Owners for monetary damages for: (1) any breach of the director's duty of loyalty to the corporation or its members; (2) acts or omissions not in good faith or which

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involve intentional misconduct or a knowing violation of law; (3) acts specified in C.R.S. Section 7-24-111; or (4) any transaction from which the director derived an improper personal benefit.

ARTICLE VII

Officers

The Board of Directors may appoint a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as the Board, in accordance with the provisions of the Bylaws, believes will be in the best interests of the corporation. The officers shall have such duties as may be prescribed in the Bylaws and shall serve at the pleasure of the Board of Directors.

ARTICLE VIII

Conveyances and Encumbrances

Subject to any restrictions set forth herein, in the Bylaws or in the Declaration, corporate property may be conveyed or encumbered by authority of the corporation and the Board of Directors. Conveyances or encumbrances shall be by instrument executed by the President or a Vice President and by the Secretary or the Treasurer or an Assistant Secretary or Assistant Treasurer or executed by such other person or persons to whom such authority may be delegated by the Board.

ARTICLE IX

Initial Registered Office and Agent

The initial registered office of the corporation shall be P. O. Box 958, 20 Eagle Road, Avon, Colorado 81620. The initial registered agent at such office shall be Robert Warner, Jr.

ARTICLE X

Dissolution

In the event of the dissolution of this corporation, either voluntarily by the members hereof, by operation of law, or otherwise, then the assets of this corporation shall be deemed to be owned by the members at the date of dissolution in proportion to each member's ownership of the Common Elements of the Condominium Project.

ARTICLE XI

Amendments

Amendments to these Articles of Incorporation shall be adopted, if at all, in the manner as set forth in the Colorado Nonprofit Corporation Act, provided, however, that no amendment to the Articles of Incorporation shall be contrary to or inconsistent with any provision of the Declaration.

ARTICLE XII

Indemnification

A. The corporation may indemnify any Person, including without limitation Declarant, who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether criminal, civil, administrative or investigative (other than an action by or in the right of the corporation, except as otherwise provided pursuant to the following subpart B) by reason of the fact that such Person is or was a director, officer, Managing Agent, employee, fiduciary, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, project manager, employee, fiduciary or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Person in connection with such action, suit or proceeding, if such Person acted in good faith and in a manner such Person reasonably believed to be in the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the Person did not act in good faith and in a manner which such Person reasonably believed to be in the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe the conduct was unlawful.

B. The corporation may indemnify any Person, including without limitation Declarant, who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the corporation to procure a judgment in favor of the corporation by reason of the fact that such Person is or was a director, officer, Managing Agent, employee, fiduciary or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, project manager, employee, fiduciary or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and

reasonably incurred by such Person in connection with the defense or settlement of such action or suit if such Person acted in good faith and in a manner such Person reasonably believed to be in the best interests of the corporation, but no indemnification shall be made in respect of any claim, issue or matter as to which such Person has been adjudged to be liable for negligence or misconduct in the performance of such Person's duty to the corporation unless, and only to the extent that, the court in which such action or suit is brought determines upon application that, despite the adjudication of liability, but in view of all the circumstances of the case, such Person is fairly and reasonably entitled to indemnification for such expenses as the court deems proper.

C. To the extent that a director, officer, Managing Agent, employee, fiduciary or agent of the corporation, including without limitation Declarant, has been successful on the merits in defense of any action, suit or proceeding referred to in subparts A and B of this Article XII, or in the defense of any claim, issue or matter therein, such Person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such Person in connection therewith.

D. Any indemnification under subparts A and B of this Article XII, and as distinguished from subpart C of this Article XII, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, Managing Agent, employee, fiduciary or agent is proper in the circumstances because such Person has met the applicable standard of conduct set forth in subparts A and B above, as applicable. Such determination shall be made by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit, or proceeding, or, if such a quorum is not obtainable (or even if obtainable, if a quorum of disinterested directors so directs), by independent counsel in a written opinion, or by the members of the corporation entitled to vote thereon.

E. Expenses, including attorneys' fees, incurred in defending a criminal or civil action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding, as authorized in subparts C and D of this Article XII, upon: (i) receipt of a written affirmation from the director, officer, Managing Agent, employee, fiduciary or agent of such Person's good faith belief that such Person has met the applicable standard of conduct set forth in subparts A and B above, and (ii) receipt of a written undertaking by or on behalf of said Person to repay such amount if it is ultimately determined that such Person is not entitled to be indemnified by the corporation as authorized in this Article XII and (iii) upon determination (in accordance with the procedures described in the last sentence of

subpart D above) that the facts then known to those making such determination would not preclude indemnification under this Article XII.

F. The indemnification provided by this Article XII shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of members or disinterested directors of the corporation, or otherwise, and any procedure provided by any of the foregoing, both as to action in such Person's official capacity and as to action in another capacity while holding such office, and shall continue as to a Person who has ceased to be a director, officer, Managing Agent, employee, fiduciary, or agent, and shall inure to the benefit of the heirs, executors, administrators, personal representatives, successors and assigns of such a Person.

G. The corporation may purchase and maintain insurance on behalf of any Person who is or was a director, officer, Managing Agent, employee, fiduciary or agent of the corporation, or who is or was serving at the request of the corporation as a director, officer, project manager, employee, fiduciary or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such Person and incurred by such Person in any such capacity or arising out of such Person's status as such, whether or not the corporation would have the power to indemnify such Person against such liability under the provisions of this Article XII.

ARTICLE XIII

Incorporation

The incorporator of this corporation and her address is as follows:

<u>Name</u>	<u>Address</u>
Deborah G. Wittman	P. O. Box 958, Avon, Colorado 81620

