

SENATE OF COLORADO



DEPARTMENT OF
STATE

CERTIFICATE

I, MARY ESTILL BUCHANAN, 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 CERTIFICATE OF INCORPORATION TO MOUNTAIN VIEW ESTATES HOMEOWNERS' ASSOCIATION, A NON-PROFIT CORPORATION.



Mary Estill Buchanan

SECRETARY OF STATE

DATED: MARCH 29, 1979

401

FILED

ARTICLES OF INCORPORATION

OF

29 MAR '79

MOUNTAIN VIEW ESTATES HOMEOWNERS' ASSOCIATION

STATE OF COLORADO
DEPT. OF STATE

THE UNDERSIGNED PERSON, over the age of eighteen years, desiring to establish a nonprofit corporation pursuant to the Colorado Nonprofit Corporation Act, Articles 20 to 29 of Title 7, Colo. Rev. Stat. 1973, as amended, hereby certifies:

FIRST: The name of the corporation shall be Mountain View Estates Homeowners' Association.

SECOND: The corporation shall have perpetual existence.

THIRD: (a) Purposes. The purposes for which this nonprofit corporation is organized are as follows: To provide an entity under which owners of property in Mountain View Estates, a subdivision in Steamboat Springs, Colorado, may operate and act; to define the membership in the Association and the voting rights of the members thereof; to control, improve, protect, lease, purchase, or otherwise obtain and deal with interests in the open areas, in the public or quasi-public areas, and in the areas not used for private purposes in said Mountain View Estates, and to sell, encumber, convey or dispose of same; to require members to make contributions to the Association; to provide, foster, construct, repair and maintain recreational facilities in and about said Mountain View Estates; to enforce the zoning provisions of the City of Steamboat Springs as far as applicable to Mountain

View Estates and to enforce the restrictive covenants applicable thereto; to receive by assignment all the rights and duties of the Grantor under the restrictive covenants applicable to said Mountain View Estates; to be bound by the provisions of said restrictive covenants as filed or as amended; generally to take such steps as seem to be economically feasible for the Association for the general welfare and benefit of the owners of lands or homes in Mountain View Estates, and generally to engage in any acts, activities or purposes permitted by the Colorado Nonprofit Corporation Act.

(b) Powers. In furtherance of the foregoing purposes, but subject to the restrictions set forth in THIRD(c), the corporation shall have and may exercise all of the powers now or hereafter conferred upon nonprofit corporations organized under the laws of Colorado and may do everything necessary or convenient for the accomplishment of any of the corporate purposes.

(c) Restrictions Upon Powers.

(i) No part of the net earnings of the corporation shall inure to the benefit of any director or officer or member of the corporation or any other private individual, except that reasonable compensation may be paid for services rendered to or for the corporation which relate to one or more of its purposes.

(ii) No distribution of the corporate assets shall be made until all corporate debts are paid, and then only upon final dissolution of the corporation pursuant to the Colorado statutes. Upon such dissolution and distribution, the assets remaining after payment of all debts shall be distributed equally among the members of the corporation.

FOURTH: The operations of the corporation shall be conducted in such places within or outside of the United States as may from time to time be determined by the board of directors. The address of the initial registered and principal office of the corporation is P. O. Box AF, Unit 307, Ski Time Square Condominium, Mt. Werner Road, Steamboat Springs, Routt County, Colorado 80477. The name of the initial registered agent at such address is Robert J. Hamilton.

FIFTH: The corporation shall have one or more classes of members. The designation of such one or more classes of members, the manner of election or appointment or acquisition of membership states, and the qualifications and rights and privileges of the members of each class shall be set forth in the bylaws. The corporation may issue membership certificates to its members.

SIXTH: The control and management of the affairs of the corporation and of the disposition of its funds and property shall be vested in a board of directors. Each director must be a member of the corporation. The number of directors (which may not be less than one), their term of

office and the manner of their appointment or election shall be set forth in the bylaws. In all elections for directors, cumulative voting shall be required. One director shall constitute the initial board of directors, whose name and address is as follows:

Robert J. Hamilton

P. O. Box AF
Unit 307
Ski Time Square Condominiums
Mt. Werner Road
Steamboat Springs, CO 80477

SEVENTH: The corporation shall have such officers as may from time to time be prescribed by the bylaws. Their terms of office and the manner of their designation, appointment or selection shall also be determined according to the bylaws.

EIGHTH: The initial bylaws of the corporation shall be as adopted by the initial board of directors, and may thereafter be altered, amended or repealed in the manner provided in the bylaws. Such bylaws may contain any provisions for the regulation or management of the affairs of the corporation which are not inconsistent with laws or these articles of incorporation, as the same may from time to time be amended.

NINTH: The corporation reserves the right to amend, alter, change or repeal any provision contained in these articles of incorporation in the manner provided in the Colorado Nonprofit Corporation Act, as may be amended from time to time.

TENTH: The name and address of the incorporator is:

Mary Jane Simmons

P. O. Box AF
401 Lincoln Avenue
Steamboat Springs, CO 80477

IN WITNESS WHEREOF, the undersigned has signed and
acknowledged these articles of incorporation this 20th day
of March, 1979.

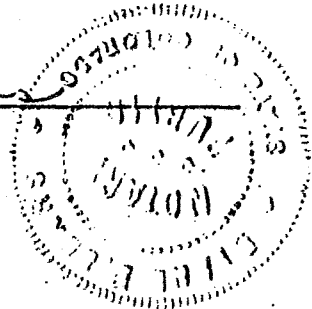
Mary Jane Simmons
Mary Jane Simmons

STATE OF COLORADO)
COUNTY OF ROUTT)

THE FOREGOING INSTRUMENT was acknowledged before me
this 28th day of March, 1979, by Mary Jane Simmons.

WITNESS my hand and official seal.

Diane B. Dean
Notary Public



My commission expires: 10-26-82

SUBDIVISION IMPROVEMENTS AGREEMENTMOUNTAIN VIEW ESTATESFilings Nos. 1, 2, 3 and 4

THIS AGREEMENT entered into this 1st day of January, 1978, between ROBERT J. HAMILTON (hereinafter referred to as "Developer") and the CITY OF STEAMBOAT SPRINGS, COLORADO, a Colorado municipal corporation (hereinafter referred to as "City").

WHEREAS, Developer is the owner and subdivider of the real property development known and described as MOUNTAIN VIEW ESTATES, FILINGS 1 through 4, located in Steamboat Springs, Colorado, and has presented to the City final plats for each of such four filings of said subdivision; and

WHEREAS, the Subdivision Regulations of the City of Steamboat Springs require the execution of a Subdivision Improvements Agreement between the City and the Developer, whereunder the Developer shall agree to construct certain public improvements, the completion of which are guaranteed as herein provided; and

WHEREAS, the City has determined that its entering into this Agreement is in the public interest and is necessary for the protection of the public health, safety and welfare of the City; and

WHEREAS, the City and the Developer have entered into this Agreement in consideration of the promises made by them for their benefit and for the benefit of the ultimate owners of the lots located in said subdivision.

Recorded at 1015
 October 2, 1978
 Reception No. 272669

Jan 23, 1978
 EUNICE DORR, Recorder

NOW, THEREFORE, THE PARTIES ACKNOWLEDGE AND AGREE:

1. DEFINITIONS. All of Developer's property affected hereby and consisting of Filings 1 through 4 of Mountain View Estates is herein referred to as the "Subdivision" and each of the four separate filings evidenced by separate recorded plats is herein referred to as a "Filing."

2. CONSTRUCTION OF IMPROVEMENTS. Developer agrees to construct within the Subdivision: (i) all public roads shown on and dedicated by the four plats of the four Filings of the Subdivision, (ii) sewage disposal trunklines and appurtenances and water distribution trunklines and appurtenances available to every lot in the Subdivision; (iii) single-phase underground electric service available to every lot in the Subdivision; and (iv) reasonable and necessary drainage structures and drainage features within the Subdivision. Further, Developer agrees to revegetate all soils in the Subdivision disturbed in connection with the foregoing construction. Further, Developer agrees to construct (to the extent not now existing) and maintain a "lawful fence" (as defined in C.R.S. §35-46-101, 1973) on the portion of the outer boundary of the Subdivision as borders agricultural lands, provided this provision is subject to the provisions of Sections 35-46-112 through 35-46-114, C.R.S. 1973. All of the foregoing are sometimes hereinafter referred to as the "Required Improvements." Developer and City acknowledge and agree that Developer may, over the time periods herein permitted, perform such construction severally and in phases on and with respect to each separate Filing, and Developer is not hereby obligated to perform such construction on all four Filings simultaneously.

3. REGULATIONS AND SPECIFICATIONS. The Required Improvements specified in Paragraph 2 above shall be designed and constructed, as respects each Filing, in accordance with the City's regulations and specifications in effect as of the "starting date" for such Filing as described in Paragraph 4, except for any rule or regulation which would then otherwise require an amendment to or change in or refiling of a plat of any Filing. Required Improvements shall also be designed and constructed in accordance with the final plat of such Filing (all of the final plats for Filings 1 through 4 are incorporated herein by this reference) and in accordance with plans and specifications to be provided to the City as provided in the next sentence. Prior to construction of Required Improvements in any Filing, Developer shall provide to the City Engineer all plans and specifications for such construction in such Filing in conformance with the previous sentence, which plans and specifications shall be subject to the prior reasonable approval of such City Engineer. The City Engineer shall approve or disapprove such plans and specifications in writing to Developer within forty (40) days of submittal, and failure of such response within such time shall conclusively be deemed approval of such plans and specifications. Disapproval shall be accompanied by full and complete detail of manner in which such plans and specifications fail to conform to the provisions of this Paragraph 3.

4. COMPLETION AND STARTING DATES. Required Improvements for each of the four separate Filings shall, as to such Filing, be completed to preliminary acceptance by the City no later than 24 months after the "starting date" for such Filing as defined in the next sentence, unless the City, in its sole discretion, grants in writing an extension of such completion time. The "starting date" for construction of Required Improvements in any Filing shall be deemed to be the date on which

Developer shall substitute a letter of credit, performance bond or lender's guarantee letter (in form reasonably satisfactory to the City Attorney) for the consent injunction security for such Filing as described in Paragraph 6 hereof. The "starting date" for any Filing may be different from the "starting date" of any other Filing, but in any event (a) the "starting date" for the first Filing for which Required Improvements are started (which may be any of such four Filings) shall be not later than the third anniversary of execution of this Agreement, and (b) the "starting dates" for all four Filings shall occur on or before the seventh anniversary of execution of this Agreement.

5. ESTIMATED COSTS. The estimated cost of constructing Required Improvements in any Filing shall be determined at the "starting date" for the purpose of setting the amount of security substituted in such Filing for the consent injunction, as provided in Paragraph 6. Such estimated cost (herein called "Estimated Cost") for a Filing shall be the contract prices for constructing such of the Required Improvements in such Filing as not previously completed and accepted by the City, as set in or determined by bona fide written contracts between Developer and contractors dated not earlier than 120 days prior to the "starting date" for such Filing. Where any contract is a unit price contract, then the "contract price" for purposes of the previous sentence shall mean unit prices times the estimate of units prepared in writing by Dismuke & Dismuke, Inc., or its successor entity, or by any other professional engineering firm selected by Developer and approved by the City.

6. COMMITMENT GUARANTEE. Developer's performance under this Agreement is secured by a consent injunction entered by the District Court in and for Routt County.

Colorado, in the case of City of Steamboat Springs v. Robert J. Hamilton, Civil Action No. 78CV10, which consent injunction is approved by Developer, by the City and by the Court. A certified copy of such consent injunction shall be recorded in the real property records of Routt County contemporaneously with recording of the four plats for all four Filings of the Subdivision. Such consent injunction prohibits and enjoins the sale and conveyance of any lot in any Filing of the Subdivision by reference to the plats thereof. Excepted from the said consent injunction are transfers of the entirety of the Subdivision, any transfers by metes and bounds of more than 35-acre parcels, any transfers by government survey description of more than 35-acre parcels, transfers by operation of law on death, transfers due to incompetency, and any transfer of a parcel of more than 35 acres made in foreclosure of any mortgage or deed of trust; provided, however, that the City shall be notified in writing of each such excepted transfer. Such consent injunction shall be partially released, terminated and discharged and rendered null and void as respects any Filing if and only if: (a) all Required Improvements in such Filing have been constructed as hereinabove provided and have been finally accepted by the City as provided in Paragraph 12 herein, or (b) within the respective time periods provided in the last sentence of Paragraph 4 above Developer shall, as to such Filing, provide to the City, in lieu of such consent injunction, a guarantee or assurance of completion of construction of the remaining Required Improvements in such Filing per the provisions of Paragraph 3 above, in the form of a letter of credit, performance bond, lender's guarantee letter or other acceptable security (referred to herein as "Construction Assurance" to distinguish from the consent injunction), in form reasonably

satisfactory to the City Attorney, such Construction Assurance to be in the amount of 125% of the Estimated Cost of such remaining Required Improvements for such Filing. After partial release, discharge and termination of such consent injunction as to any Filing and the substitution therefor of such Construction Assurance, then the provisions of such Construction Assurance and of Paragraphs 10, 11 and 12 herein shall apply to and govern all security for completion of such Filing. If Developer shall fail to obtain the partial release, termination and discharge of the consent injunction (pursuant to the above provisions) for at least one Filing on or before the third anniversary hereof, or shall fail to obtain the full and complete release of the consent injunction (pursuant to the above provisions) for all four Filings on or before the seventh anniversary hereof, then such consent injunction may not be further released, terminated or discharged as respects Filings still encumbered thereby except only (i) on written approval of the City pursuant to any terms, conditions and provisions the City may in its sole discretion set, or (ii) on vacating and withdrawing by Developer, of record, of the plat or plats of the Filing or Filings of the Subdivision then still encumbered by such consent injunction. After partial release, termination and discharge of the consent injunction as respects any Filing, Developer may sell, convey, transfer, encumber, lease, contract for sale and otherwise deal with any and all lots within such Filing free from the constraints of such injunction.

7. RIGHTS-OF-WAY. Before commencing the construction of any Required Improvements herein agreed upon, Developer shall acquire, at his own expense, good and sufficient rights-of-way on all lands and facilities traversed by such Required Improvements, other than for roads and other than on

lands within the Subdivision owned by Developer. All such rights-of-way so required to be acquired shall be conveyed to the City and such necessary documents of conveyance shall be furnished to the City for recording. Developer shall not be required to acquire additional width of road rights-of-way outside of the boundaries of road rights-of-way dedicated to the City on the plats of the Subdivision.

8. RELEASE OF LIABILITY; INSURANCE. Developer shall indemnify and save harmless the City from any and all suits, actions, or claims of every nature and description occurring during the period of construction of Required Improvements and for one year thereafter, and caused by, arising from, and on account of said construction process, and pay any and all judgments rendered against the City on account of any such suit, action, or claim, together with all reasonable expenses and attorney's fees incurred by the City in defending such suit, action, or claim. The Developer shall assure that all contractors and other employees engaged in the construction of the Required Improvements shall maintain adequate workmen's compensation insurance and public liability insurance coverage. Before proceeding with construction of any of the Required Improvements in any Filing, the Developer shall provide liability and property damage insurance in reasonable amounts approved by the City Manager of the City, protecting the City against any and all claims for damages to persons or property resulting from the installation of any Required Improvements herein contemplated, and true and accurate copies of said insurance policies shall be filed with the City Manager.

9. WARRANTY. The Developer hereby warrants that all Required Improvements will be installed in a good and workman-like manner in accordance with the provisions of Paragraph 2 hereof.

10. RELEASE OF CONSTRUCTION ASSURANCE. After partial release of the consent injunction as respects any Filing and the substitution therefor of Construction Assurance as hereinabove provided, then from time to time, as Required Improvements are completed in such Filing, Developer may apply in writing to the City for a partial release of the amount of such Construction Assurance guaranteeing the construction of said Required Improvements, submitting therewith a request form showing:

- (a) Original dollar amount of Construction Assurance,
- (b) Work completed, including dollar value,
- (c) Work not completed, including dollar value,
- (d) Amount of previous releases, and
- (e) Amount of Construction Assurance requested for release.

Upon receipt of such application, the City or its agent shall inspect the Required Improvements in such Filing both completed and those uncompleted. If the City determines from such inspection that the portion of the Required Improvements shown on the request as being completed have been completed as provided herein, a portion of the Construction Assurance security shall be released. The amount to be released shall be the total amount of the Construction Assurance security less (i) fifteen percent (15%) of the original amount thereof and (ii) one hundred percent (100%) of the projected costs of the Required Improvements in such Filing not completed. Notwithstanding the foregoing provisions, Developer shall not apply for a partial release of Construction Assurance security in an amount less than twenty percent (20%) of the total original amount, except for the last such release.

If the Required Improvements are not constructed in accordance with plans and specifications provided to and approved by the City Engineer pursuant to Paragraph 3 herein, the City shall notify the Developer of noncompliance.

Reasonable schedules for correction of noncompliance shall be established by mutual agreement of the parties. If the City determines, after release of the consent injunction and providing of Construction Assurance, upon reasonable grounds, that the Developer will not construct in a particular Filing the Required Improvements as herein provided for such Filing, the City shall notify in writing the Developer and the bank or lender guaranteeing Developer's performance by the Construction Assurance. The Developer and such bank or lender shall be afforded a hearing before the City Council within thirty (30) days of the date of written notification for the purpose of providing adequate assurance of corrective completion to the City. Unless satisfied at such hearing on the basis of reasonable construction standards that all Required Improvements in a Filing shall be completed as required herein, the City may withdraw from the Construction Assurance for such Filing such funds as may be reasonably necessary, in the opinion of the City, to construct the uncompleted Required Improvements in such Filing, and the City shall expend such withdrawn funds toward completion of such Required Improvements.

In any event, if said Required Improvements in any Filing are not completed to preliminary acceptance by the City within 24 months after providing the Construction Assurance, the City may cancel and annul this Agreement with respect only to such Filing, upon written notification to Developer and the bank or lender guaranteeing Developer's performance under the Construction Assurance, and, without the necessity of a public hearing, may withdraw from the Construction Assurance for such Filing such funds as may be reasonably necessary, in the opinion of the City, to construct

the uncompleted Required Improvements in such Filing, and the City shall expend such withdrawn funds toward completion of such Required Improvements.

11. COMPLETION PROCEDURES AND INSPECTIONS. Upon completion of the Required Improvements in any Filing, or any logical separable portion thereof, Developer shall notify the City in writing and request preliminary inspection of the completed Required Improvements or part thereof. The City or its agent shall inspect said improvements and shall notify Developer in writing of nonacceptance or preliminary acceptance of the completed Required Improvements. If the improvements are not acceptable, the reasons for nonacceptance shall be stated in writing and corrective measures shall be outlined to the Developer by the City in writing.

During the period of preliminary acceptance, the Developer shall, at his own expense, make all needed repairs or replacements due to defective materials or workmanship and be responsible for all maintenance of said improvements.

Upon preliminary acceptance by the City of all Required Improvements in any Filing, the Construction Assurance shall be reduced pro rata in accordance with the provisions of Paragraph 10 above to fifteen percent (15%) of the original amount thereof. Said fifteen percent (15%) retention shall be for the sole purpose of insuring the correction of the improvements due to deficiencies in workmanship and/or material during the ensuing one year period by the Developer.

As-built engineering drawings shall be submitted for all public utility installations upon completion of all required utility improvements and prior to request for, or issuance of, certificates of occupancy.

Nothing herein shall be construed to require the City to make inspections during periods when climatic conditions make thorough inspection infeasible.

12. FINAL ACCEPTANCE AND MAINTENANCE FOR PUBLIC IMPROVEMENTS. Following the period of preliminary acceptance for Required Improvements, the City or its agent shall inspect said improvements for final acceptance. The period of preliminary acceptance shall be one year for all improvements, but inspection shall only occur in the months of June through October. All periods of preliminary acceptance shall run from the date of written notification of preliminary acceptance.

The City shall notify the Developer in writing of non-acceptance or final acceptance. If the improvements are not acceptable, the reasons for nonacceptance shall be outlined in writing to the Developer.

If the improvements are found to be acceptable, the City, following a Resolution of Acceptance by the City Council, shall release all remaining retainage of the original Construction Assurance security for such accepted improvements in such Filing and shall, as of the date of such Resolution, assume full maintenance responsibility for said Required Improvements in said Filing.

13. RECORDING AGREEMENT. Developer shall record a copy of this Agreement with the Clerk and Recorder of Routt County, Colorado, with the four final plats of Filings Nos. 1 through 4 of the Subdivision.

14. MISCELLANEOUS. This Agreement contains the entire agreement between the parties on the subject matter hereof and shall be construed by Colorado law. This Agreement is binding on and inures to the benefit of the heirs, repre-

representatives, transferees, successors and assigns of the parties. The paragraph headings are descriptive only and neither amplify nor limit the substantive material. The failure to enforce or the waiver of any specific requirements of this Agreement by either party shall not be construed as a general waiver of the Agreement or any provision herein, nor shall such action act to estop either party from subsequently enforcing this Agreement according to the terms hereof. Should any section, paragraph, clause or provision of this Agreement be declared by a court of competent jurisdiction to be invalid, said decision shall not affect the validity of this Agreement as a whole or any part thereof other than the part declared to be invalid, and the parties hereby affirm that they would have entered into this Agreement and each of its provisions independently of each of its other provisions. Except for the provisions of Paragraphs 7 and 8 herein, nothing herein contained shall create any personal liability of Developer but the City shall look solely to the security provided for herein for enforcement of Developer's obligations.

This Agreement shall terminate upon full release and discharge of the consent injunction and upon final release of the Construction Assurance for all Filings as provided in Paragraph 12.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.



CITY OF STEAMBOAT SPRINGS

By: *Bob Pennington*
City Council President

Debi Macey
City Clerk

[Faint handwritten notes and signatures at the bottom of the page]