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Articles of Incorporation for a Nonprofit Corporation

filed pursuant to §7-90-301, et seq. and §7-122-101 of the Colorado Revised Statutes (C.R.S)

1. Entity name:

Barn Village at Steamboat Owners Association

(The name of a nonprofit corporation may, but need not, contain the term or abbreviation "corporation", "incorporated", "company", "limited", "corp.", "inc.", "co." or "Ltd." §7-90-601, C.R.S.)

2. Use of Restricted Words *(if any of these terms are contained in an entity name, true name of an entity, trade name or trademark stated in this document, mark the applicable box):*

- "bank" or "trust" or any derivative thereof
 "credit union" "savings and loan"
 "insurance", "casualty", "mutual", or "surety"

3. Principal office street address:

600 South Lincoln Avenue

(Street name and number)

Suite 202

Steamboat Springs

(City)

CO

(State)

80487

(Postal/Zip Code)

United States

(Country - if not US)

(Province - if applicable)

4. Principal office mailing address:
 (if different from above)

(Street name and number or Post Office Box information)

(City)

(State)

(Postal/Zip Code)

(Province - if applicable)

(Country - if not US)

5. Registered agent: (if an individual):

Berkey

(Last)

Daniel

(First)

R.

(Middle)

(Suffix)

OR (if a business organization):

6. The person appointed as registered agent in the document has consented to being so appointed.

7. Registered agent street address:

600 South Lincoln Avenue

(Street name and number)

Suite 202

Steamboat Springs

(City)

CO

(State)

80487

(Postal/Zip Code)

8. Registered agent mailing address:
 (if different from above)

(Street name and number or Post Office Box information)

(City) *(State)* *(Postal/Zip Code)*

(Province – if applicable) *(Country – if not US)*

9. If the corporation's period of duration is less than perpetual, state the date on which the period of duration expires:

(mm/dd/yyyy)

10. (Optional) Delayed effective date:

(mm/dd/yyyy)

11. Name(s) and address(es) of incorporator(s): (if an individual)

Berkey Daniel R.
(Last) (First) (Middle) (Suffix)

OR (if a business organization)

600 South Lincoln Avenue
(Street name and number or Post Office Box information)
Suite 202
Steamboat Springs CO 80487
(City) (State) (Postal/Zip Code)
United States
(Province – if applicable) (Country – if not US)

(if an individual)

(Last) (First) (Middle) (Suffix)

OR (if a business organization)

(Street name and number or Post Office Box information)

(City) (State) (Postal/Zip Code)
United States
(Province – if applicable) (Country – if not US)

(if an individual)

(Last) (First) (Middle) (Suffix)

OR (if a business organization)

(Street name and number or Post Office Box information)

(City) (State) (Postal/Zip Code)
United States
(Province – if applicable) (Country – if not US)

(If more than three incorporators, mark this box and include an attachment stating the names and addresses of all incorporators.)

12. The nonprofit corporation is formed under the Colorado Revised Nonprofit Corporation Act.
13. The corporation will **OR** will not have voting members.
14. A description of the distribution of assets upon dissolution is attached.
15. Additional information may be included pursuant to §7-122-102, C.R.S. and other organic statutes. If applicable, mark this box and include an attachment stating the additional information.

Notice:

Causing this 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 that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the secretary of state, whether or not such individual is named in the document as one who has caused it to be delivered.

16. Name(s) and address(es) of the individual(s) causing the document to be delivered for filing:

Yanowitz	Jason	Marc	
<i>(Last)</i>	<i>(First)</i>	<i>(Middle)</i>	<i>(Suffix)</i>
600 South Lincoln Avenue			
<i>(Street name and number or Post Office Box information)</i>			
Suite 202			
Steamboat Springs	CO	80487	
<i>(City)</i>	<i>(State)</i>	<i>(Postal/Zip Code)</i>	
	United States		
<i>(Province – if applicable)</i>	<i>(Country – if not US)</i>		

(The document need not state the true name and address of more than one individual. However, if you wish to state the name and address of any additional individuals causing the document to be delivered for filing, mark this box and include an attachment stating the name and address of such individuals.)

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Attachment 1

Attachment to Articles of Incorporation

**ATTACHMENT TO
ARTICLES OF INCORPORATION
OF
BARN VILLAGE AT STEAMBOAT OWNERS ASSOCIATION**

ARTICLE 1 - Introduction; Certain Definitions

Barn Village at Steamboat, a subdivision in the City of Steamboat Springs, Routt County, Colorado, shall be established as a planned community pursuant to the provisions of the Colorado Common Interest Ownership Act, as amended. Capitalized terms used but not defined herein shall have the meaning set forth in the Declaration of Covenants, Conditions, Restrictions, and Easements for the Barn Village at Steamboat that shall be recorded in the real estate records of Routt County, Colorado (the "Declaration"). Terms defined in the Declaration include, without limitation "Association," "Association Control Period," "Bargain and Sale Deed," "Common Expense," "Common Property," "Declaration," "Design Guidelines," "Lot," "Owner," "Person," "Property" and "Rules and Regulations." The term "Director" shall have the meaning ascribed to it in the Bylaws. The terms defined in C.R.S. §38-33.3-103 shall have the same meanings when used in these Articles of Incorporation.

ARTICLE 2 – Name

The name of this corporation shall be Barn Village at Steamboat Owners Association. The corporation is sometimes referred to in these Articles of Incorporation and in the corporation's Bylaws as the "Association."

ARTICLE 3 – Purposes and Powers

3.1 Purposes. The Association shall operate the common interest planned community known as the Barn Village at Steamboat, a subdivision located in the City of Steamboat Springs, Routt County, Colorado (the "Subdivision" or "Project"), in accordance with the Declaration, as amended from time to time, the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, et seq. and the Colorado Revised Nonprofit Corporation Act, C.R.S. §7-21-101, et seq., as either may be amended from time to time. The objects and purposes of the Association are:

- (a) To act as the association of the Owners of Lots in the Subdivision;
- (b) To manage the operation, management, repair, maintenance and supervision of the Subdivision;
- (c) To provide for and accomplish the installation, construction, erection, repair, maintenance, conservation, administration, improvement, replacement, management, operation, insuring, restoration and supervision of Common Property, and any and all real and personal property acquired (by purchase, lease or otherwise) by the Association for the common use of the Owners;

- (e) To provide for architectural and aesthetic control within the Subdivision;
- (e) To carry out the purposes of and to enforce the provisions of the Declaration, these Articles of Incorporation, the Bylaws, and the Rules and Regulations of the Association, as amended from time to time;
- (f) To define membership and the voting rights of the members;
- (g) To regulate and control the relationships among the Owners of Lots, in connection with their ownership of the Lots;
- (h) To provide for the pleasure and recreation of the Owners;
- (i) To promote the health, safety, welfare and common benefit of the Owners of the Lots in the Subdivision, and promote the best interests of the Owners for the purpose of securing for them the fullest utilization and enjoyment of the Project consistent with its purposes; and
- (j) To pay the Common Expenses and to assess and collect from the Owners funds necessary to pay Common Expenses; and
- (k) To engage in any lawful business or activity.

3.2 Powers. In furtherance of the foregoing purposes, the Association shall have and may exercise any and all powers and authority, and do any and all acts which are delegated, described or provided, expressly or implicitly, to the Association in the Declaration, these Articles of Incorporation, the Bylaws, Resolutions, and the Rules and Regulations (including the Design Guidelines) of the Association, and the Association shall have and may exercise any and all permitted acts, powers, rights and privileges which are granted to a common interest planned community under the laws of the State of Colorado. The statements of purposes and powers set forth in these Articles of Incorporation shall be construed as statements of both purposes and powers. The purposes and powers stated in each clause or phrase shall not be limited or restricted by reference to or inference from the terms or provisions of any other clause or phrase, but shall be broadly construed as independent purposes and powers. As part of the powers of the Association, but not in limitation of the full plenary power of the Association, the Association shall have the power:

- (a) Real and Personal Property. To acquire, by gift, purchase, trade or any other method, and to own, lease from third parties, operate, build, manage, use, rent, sell, hold, develop, improve, encumber, dispose of and otherwise deal in and with real and personal property of every kind and character, tangible and intangible, wherever located, and interests of every sort therein, including all property and property interests conveyed or to be conveyed to the Association by the Declarant in the Bargain and Sale Deed or otherwise.
- (b) Borrowing. To borrow funds or raise moneys in any amount for any of the purposes of the Association, and from time to time to execute, accept, endorse and

deliver, as evidence of such borrowing, all kinds of instruments and securities, including but without limiting the generality of the foregoing, promissory notes, drafts, bills of exchange, warrants, bonds, debentures, property certificates, trust certificates and other negotiable or non-negotiable instruments and evidences of indebtedness, and to secure the payment and performance of such securities by mortgage on, or pledge, conveyance, deed or assignment in trust of, the whole or any part of the assets of the Association, real, personal or mixed, including contract rights, whether at the time owned or hereafter acquired, subject, however, to any limitations provided in the Declaration.

(c) Contracts. To enter into, make, amend, perform and carry out, or cancel and rescind, contracts, leases, permits and concession agreements for any lawful purposes pertaining to its business.

(d) Assessments. To fix, determine, levy and collect general and special Common Expense assessments pursuant to the Declaration, including without limitation assessments to fund any reserve deemed appropriate by the Executive Board, and to levy and collect fees (including, without limitation, attorneys' fees), late charges, costs and interest in accordance with the Declaration, the Policies, the Bylaws and/or the Rules and Regulations (including the Design Guidelines) of the Association, and to exercise and enforce any and all remedies provided in the Declaration for collection of such assessments, fees, late charges, costs and interest.

(e) Rule-Making. To make, amend and enforce rules and regulations (the "Rules and Regulations") with regard to the management, use, occupancy, appearance, operation, maintenance, repair and replacement of the assets of the Association and Common Property, and with regard to the use and occupancy of the Lots and Common Property.

(f) Construction, Management, Maintenance and Repair. To construct, install, erect, replace, maintain, repair, manage and supervise agricultural and recreational facilities and any improvements now or hereafter installed or existing on, under, within or above any real property or property interests owned by the Association.

(g) General Powers. To do everything necessary, suitable or proper for the accomplishment of any of the purposes, the attainment of any of the objectives, or the furtherance of any of the powers above set forth, either alone or in connection with other corporations, firms or individuals, and either as principal or agent, and to do every act or thing incidental or appurtenant to, or growing out of, or connected with any of the aforesaid objectives, purposes or powers, and to do any act authorized or permitted by the Declaration.

(h) Powers Conferred by Law. The Association shall have all powers provided or permitted by the Declaration, and shall have all powers provided or permitted by the Colorado Common Interest Ownership Act and the laws of Colorado applicable to nonprofit corporations.

The foregoing enumeration of specific powers shall not limit or restrict in any manner the general powers of the Association and the enjoyment and exercise thereof as now are or as may hereafter be conferred by the laws of Colorado or the Declaration.

3.3 Restrictions Upon Purposes and Powers. The purposes and powers of the Association are subject to the following limitations:

(a) The Executive Board of the Association may, for any taxable year of the Association, elect to have Section 528 of the Internal Revenue Code apply to the Association. So long as the Executive Board shall have so elected that said Section 528 apply to the next ensuing taxable year of the Association, then:

(i) The Association shall be organized and operated solely as a "homeowners association," as defined in and limited by Section 528(c) of the Internal Revenue Code, for such year;

(ii) The Association shall not for such taxable year receive more than forty percent (40%) of its gross income from amounts other than membership dues, fees and assessments from Owners of Lots;

(iii) The Association shall not for such taxable year expend more than ten percent (10%) of its gross expenditures for purposes other than the acquisition, construction, management, maintenance and care of real and personal property held by the Association and other property qualifying as "association property" under Section 528(c)(4) of the Internal Revenue Code.

(b) No part of the net earnings of the Association shall inure to the benefit of any member of the Association (other than by acquiring, constructing or providing management, maintenance and care of such property of the Association qualifying as "association property" under Section 528(c)(5) of the Internal Revenue Code, and other than by a rebate of excess membership dues, fees or assessments).

3.4 Dividends, Distributions, Etc. The Association shall not pay any dividends. No distribution of the corporate assets to members shall be made until all corporate debts are paid, and then only upon final dissolution of the Association. Upon dissolution and after winding up the affairs of the Association, funds remaining after payment of all debts shall be distributed among the Owners in accordance with the allotted interest of each Lot as set forth in Article 5, Section 3 of the Declaration ("Allotted Interests"), and assets other than funds shall be distributed, transferred and conveyed to the Owners as tenants in common, in accordance with their Allotted Interests.

ARTICLE 4 – Registered Office and Agent; Principal Office.

4.1 Registered Office and Agent. The address of the initial registered office of the Association is 600 South Lincoln Avenue, Suite 202, Steamboat Springs, Colorado 80487, and the name of its initial registered agent at such address is Daniel R. Berkey, Esq.

4.2 Principal Office. The initial principal office of the Association is 600 South Lincoln Avenue, Suite 202, Steamboat Springs, Colorado 80487, Attention: Daniel R. Berkey, Esq. The operations of the Association shall be conducted at such places within or outside the United States as may from time to time be determined by the Executive Board in its discretion.

ARTICLE 5 – Membership and Voting Rights

5.1 Members. Any Person or combination of Persons owning an undivided fee simple interest in a Lot (including Declarant as respects Lots from time to time owned by Declarant) in the Subdivision shall automatically be a member of the Association. Upon the subdivision of any Lot which may be further subdivided under the Declaration, the Owner of each Primary Dwelling Unit or other subdivided Lot or unit shall automatically become a member of the Association. Membership shall be continuous throughout the period that such ownership continues and shall terminate automatically whenever ownership ceases. Members may not resign from membership in the Association, but membership shall be automatically transferred upon conveyance of such member's Lot. Termination of membership shall not relieve or release any former member from any liability or obligation incurred by virtue of or in any way connected with ownership of a Lot, or impair any rights or remedies which the Association or others may have against such former Owner and member arising out of or in any way connected with such ownership or membership.

5.2 Individual Membership. Any individual acquiring an ownership interest in a Lot shall automatically become an individual member of the Association.

5.3 Organizational Membership. Any Person, other than an individual, who acquires an ownership interest in a Lot, such as a corporation, partnership, limited liability company, association or trust, shall automatically become an organizational member of the Association. Each organizational member shall from time to time designate in writing to the Association one individual who may represent it with respect to such Lot at meetings and vote on behalf of such organizational member. The Association shall maintain a record of the individual entitled to vote on behalf of such organizational member with respect to such Lot and, until the Association is notified in writing to the contrary, only such designated individual, or the written proxy of such designated individual, may cast the votes of the organizational member with respect to such Lot, and any action taken by such individual purporting to act on behalf of the organizational member shall be binding upon such organizational member. If an organizational member owns an interest in more than one Lot, such organizational member may designate separate individuals to represent such organizational member with respect to each separate Lot.

5.4 One Class. The individual members and organizational members shall constitute one class of members of the Association, being Owners who own fee simple interests in Lots.

5.5 Voting Members and Number of Votes. The Association shall have voting members. Each Lot shall be allocated one (1) vote on all and any matters to be voted on by the members of the Association. Upon the subdivision of any Lot which may be further subdivided under the Declaration to construct a duplex, each Primary Dwelling Unit shall be allocated one (1) vote on all and any matters to be voted by the members of the Association. If Lot 63 or Lot 64 is further subdivided, each subdivided Unit or Lot located on Lot 63 or Lot 64 shall be

allocated one vote on all and any matters to be voted by the members of the Association. The Association shall not be entitled to vote with respect to any Lot owned by the Association, and no Lot owned by the Association or by any governmental entity shall be allocated any votes during the period of such ownership. If the boundaries of two or more adjoining Lots are relocated pursuant to the Declaration, then each resulting altered Lot shall nevertheless have one (1) vote on all and any matters to be voted on by the members of the Association. Division of the vote allocated to a Lot among multiple Owners of such Lot shall not be allowed; rather, the vote allotted to a Lot shall be voted entirely and undivided for or against or in abstention of an issue or matter put to vote among the members of the Association.

5.6 Voting Procedures. Voting procedures shall be as specified in the Bylaws.

ARTICLE 6 – Executive Board

6.1 Executive Board. The control and management of the affairs of the Association and the disposition of its funds and property shall be vested in the Directors. All of such Directors shall constitute the Executive Board. The number of Directors shall be not less than one (1), as may be set by the Bylaws from time to time in effect, provided that the number of Directors shall not be less than three (3) after termination of the Association Control Period. The qualifications for Directors shall be as set forth in the Bylaws. Each Director shall serve for a term of one (1) year to three (3) years, as may be set by the Bylaws from time to time in effect and until his successor shall be duly elected and shall qualify. The affirmative vote of a majority of a quorum of Directors shall be required for the transaction of the business of the Directors at any meeting. Members of the Association shall be entitled to such votes in the election of Directors as are provided for in Article 5. Cumulative voting shall not be allowed in the election of Directors. The initial Executive Board shall consist of one (1) Director, and the name and address of such Director, to serve until the first annual meeting of the Association and until his successor(s) shall be duly elected and qualified, is as follows:

INITIAL DIRECTOR

<u>Name</u>	<u>Address</u>
Robert G. Comes	10600 N. De Anza Boulevard, Suite 250 Cupertino, CA 95014

6.2 Special Declarant Rights. Subject to Section 6.3 below, Declarant reserves the right for Declarant, or any Person designated by Declarant in a writing delivered to the Executive Board, to appoint and remove the Directors and the officers of the Association at any time and from time to time, in the sole discretion of the Declarant or the designee of Declarant, with or without cause, but only during the Association Control Period described in the Declaration. The Declarant may voluntarily surrender the right to appoint and remove the Directors and the officers of the Association before termination of the Association Control Period, but in that event the Declarant may require, for the duration of the Association Control Period, that specified actions of the Association or the Executive Board, as described in a recorded instrument executed by the Declarant, shall be approved by the Declarant before such actions become effective.

6.3 Election of Directors. Pursuant to the Colorado Common Interest Ownership Act, not later than sixty (60) days after conveyance of twenty-five percent (25%) of the Lots created by the Plat to Lot Owners other than Declarant, at least one Director, and not less than twenty-five percent (25%) of the Directors of the Executive Board, shall be elected by Lot Owners other than Declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the Lots created by the Plat to Lot Owners other than Declarant, not less than one-third (1/3) of the Directors of the Executive Board must be elected by Lot Owners other than Declarant.

ARTICLE 7 – Officers

The Association 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 or selection shall also be determined according to the Bylaws from time to time in effect, subject to Article 6 above.

ARTICLE 8 – Managing Agent

The Executive Board shall have power from time to time to appoint a property manager or managing agent, which may be a corporation or other entity, to carry on and perform maintenance, repair, management, operations, billing and accounting and any other functions, responsibilities and obligations (whether like or unlike the foregoing) for the Association. The Association may record in the real property records of Routt County, Colorado from time to time its acknowledged certification of the name and address of such manager or managing agent, which certificate shall be conclusive evidence of the identify of such managing agent until a later certificate is recorded. The Declarant, or any officer, director, partner, manager, shareholder or joint venturer of Declarant, or any entity controlled by Declarant, or any affiliate of Declarant, may be and act as managing agent or own or have an interest in the property management firm for the Association.

ARTICLE 9 – Indemnification

The Association shall indemnify, to the maximum extent permitted by law, any person who is or was a director, officer, agent, fiduciary or employee of the Association against any claim, liability or expense (including the cost of reasonable settlement made with tan effort toward curtailment of the costs of litigation) arising against or incurred by such person made party to a proceeding because he is or was a director, officer, agent, fiduciary or employee of the Association or because he is or was serving another entity or employee benefit plan as a director, officer, partner, trustee, employee, fiduciary or agent at the Association's request. The Association shall further have the authority to the maximum extent permitted by law to purchase and maintain insurance providing such indemnification.

ARTICLE 10 – Bylaws

The initial Bylaws of the Association shall be as adopted by the Executive Board. The Executive Board shall have the power to alter or amend the Bylaws, and the Bylaws may also be amended, altered or repealed by the affirmative vote of sixty-seven percent (67%) or more of the

votes of the membership of the Association, except where a higher voting requirement is imposed by law, the Declaration, these Articles of Incorporation or the Bylaws. Any alteration or amendment in the Bylaws made by vote of the membership shall not be further altered or amended by the Executive Board. The Bylaws may contain any provisions for the regulation or management of the affairs of the Association which are not inconsistent with law, the Declaration or these Articles of Incorporation.

ARTICLE 11 – Amendment

The Association reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation by the affirmative vote of the holders of sixty-seven percent (67%) or more of the votes of the membership of the Association, except where a higher voting requirement is imposed by law, the Declaration or these Articles of Incorporation.

ARTICLE 12 – Certain Liabilities of Directors

The personal liability of a director to the Association or to the members for monetary damages for breach of fiduciary duty as a director is hereby eliminated, except that such provision shall not eliminate or limit the liability of a director to the Association or to the members for monetary damages for:

- (a) Any breach of the director's duty of loyalty to the Association or to the members;
- (b) Acts or omissions not in good faith or which involve intention misconduct or a knowing violation of law;
- (c) Acts specified as being prohibited in C.R.S. §7-128-403 or §7-128-201(2), as amended, or any successor thereto; or
- (d) Any transaction from which the director derived an improper personal benefit.

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