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In the Office of the
Secretary of State of Texas

SEP 03 2019

CERTIFICATE OF FORMATION
OF
ENCORE EL PASO HOMEOWNERS ASSOCIATION, INC.
A Nonprofit Corporation

Corporations Section

The undersigned, acting as an organizer of a nonprofit corporation under the Texas Business Organizations Code does hereby adopt the following Certificate of Formation for such nonprofit corporation.

ARTICLE ONE
NAME

The name of the nonprofit corporation (hereinafter called the "Association") is ENCORE EL PASO HOMEOWNERS ASSOCIATION, INC.

ARTICLE TWO
STATUS

The Association is a nonprofit corporation.

ARTICLE THREE
DURATION

The period of its duration is perpetual.

ARTICLE FOUR
PURPOSE

The purposes for which the Association is organized to perform charitable activities within the meaning of Internal Revenue Code, Section 501(c)(3) and applicable state law. Specifically, the purpose for which the Association is organized is to be and constitute the Association referred to in the "Declaration of Covenants, Conditions and Restrictions of Americas Estates Unit 1 Replat A" (the "Declaration") as the Tuscan Estates Home Owners Association, Inc. for the residential project within El Paso County, Texas, as recorded (and amended from time to time) in the Public Real Estate Records of El Paso County, Texas. The purposes of the Association include the operation, repair, replacement, renovation and maintenance of improvements in common areas, to levy assessments against the Association's members for expenses relating to common areas and common area improvements, to provide for an Architectural Review Committee, and to engage in such other charitable activities as may be authorized in the Declaration or as may be authorized in the by-laws of the Association. The Association shall not engage in any purpose, action or activity which is prohibited by the Texas Business Organizations Code and by other applicable law. The Association does not contemplate pecuniary gain or profit, direct or indirect, to its Members.

ARTICLE FIVE
MEMEBERS

The Association shall have one or more classes of members. The designation of such class or classes, the manner of election or appointment, and the qualifications and rights of the members of

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each class are set forth within the Declaration and the By-laws of the Association.

ARTICLE SIX RESTRICTIONS AND REQUIREMENTS

The Association shall not pay dividends or other corporate income to its members, directors or officers or otherwise accrue distributable profits or permit the realization of private gain. The Association shall have no power to take any action prohibited by the Act.

The Association shall have no power to take any action that would be inconsistent with the requirements for a tax exemption under Internal Revenue Code Section 501(c)(3) and related regulations, rulings, and procedures. The Association shall have no power to take any action that would be inconsistent with the requirements for receiving tax deductible charitable contributions under Internal Revenue Code Section 170(c)(2) and related regulations, rulings, and procedures. Regardless of any other provision in these Articles of Incorporation or state law, the Association shall have no power to:

1. Engage in activities or use its assets in manners that are not in furtherance of one or more exempt purposes, as set forth above and defined by the Internal Revenue Code and related regulations, rulings, and procedures, except to an insubstantial degree.
2. Serve a private interest other than one that is clearly incidental to an overriding public interest.
3. Devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise, except as provided by the Internal Revenue Code and related regulations, rulings and procedures.
4. Participate in or intervene in any political campaign on behalf of any opposition to any candidate for public office. The prohibited activities include the publishing or distributing of statements and any other direct or indirect campaign activities.
5. Have objectives that characterize it as an "action organization" as defined by the Internal Revenue Code and related regulations, rulings, and procedures.
6. Distribute its assets on dissolution other than for one or more exempt purposes; on dissolution, the Association's assets shall be distributed to the state government for a public purpose, or to an organization exempt from taxes under Internal Revenue Code Section 501(c)(3) to be used to accomplish the general purposes for which the Association was organized.
7. Permit any part of the net earnings of the Association to inure to the benefit of any private shareholder or member of the Association or any private individual
8. Carry on an unrelated trade or business except as a secondary purpose related to the Association's primary, exempt purposes.

ARTICLE SEVEN INDEMNIFICATION

To the full extent permitted by applicable law, no director of this Association shall be liable to this Association or its members for monetary damages for an act or omission in such director's capacity as a director of this Association, except that this Article Seven does not eliminate or limit the liability of a director of this Association for:

1. a breach of such director's duty of loyalty to this Association or its members;
2. an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law;
3. a transaction from which such director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of such director's office;
4. an act or omission for which the liability of such director is expressly provided for by statute; or
5. an act related to an unlawful payment of a dividend.

Any repeal or amendment of this Article by the members of this Association shall be prospective only and shall not adversely affect any limitation on the personal liability of a director of this Association existing at the time of such repeal or amendment. In addition to the circumstances in which a director of this Association is not personally liable as set forth in the foregoing provisions of this Article Seven, a director shall not be liable to the full extent permitted by any Amendment to the Texas Business Organizations Code hereafter enacted that further limits the liability of a director.

To the full extent permitted by applicable law, the Association shall indemnify any director or officer against judgments, penalties (including excise and similar taxes) fines, settlements and reasonable expenses (including court costs and attorney's fees) actually incurred by any such person who was, is or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a director or officer and shall advance to such person such reasonable expenses as are incurred by him in connection therewith. The rights of directors and officers set forth in this Article shall not be exclusive of any other right which directors or officers may have or hereafter acquire relating to the subject matter hereof. As used in this Article, the terms "director" and "officers" shall mean any person who is or was a director or officer of the Association and any person who, while a director or officer of the Association, is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic Association, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise. As used in this Article, the term "proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative, any appeal in any such action, suit or proceeding and any injury or investigation that could lead to such an action, suit or

proceeding.

**ARTICLE EIGHT
REGISTERED OFFICER AND AGENT**

The street address of the Association's initial registered office is 6201 Escondido, El Paso, Texas 79912 and the name of its initial registered agent at such address is Sheldon Wheeler.

**ARTICLE NINE
INITIAL DIRECTORS**

The number of directors constituting the initial Board of Directors is three (3) and the names and addresses of the person who are to serve as directors are:

Randal S. O'Leary
7910 Gateway East #102
El Paso, Texas 79915

Kelly O'Leary
7910 Gateway East #102
El Paso, Texas 79915

Patrick Woods
7910 Gateway East #102
El Paso, Texas 79915

**ARTICLE TEN
ORGANIZER**

The name and address of the organizer is:

Hector Phillips
1017 Montana Ave.
El Paso, Texas 79902

**ARTICLE ELEVEN
EFFECTIVE DATE OF FILING**

This document becomes effective when the document is filed by the Secretary of State.

The undersigned signs this document subject to the penalties imposed by law for submission of a materially false or fraudulent instrument.

Date: August 16, 2019

ORGANIZER:

H. Phelan