

**CERTIFICATE OF FORMATION
OF
BARCELONA ESTATES SUBDIVISION RESIDENTIAL
COMMUNITY ASSOCIATION**

FILED
In the Office of the
Secretary of State of Texas
JUN 08 2010
Corporations Section

ARTICLE ONE

The name of the association is BARCELONA ESTATES SUBDIVISION RESIDENTIAL COMMUNITY ASSOCIATION (the Association)

ARTICLE TWO

The Association is a nonprofit corporation

ARTICLE THREE

The period of its duration is perpetual unless dissolved as provided in Article Eight

ARTICLE FOUR

The initial registered agent is an individual resident of the state of Texas whose name is GENE F SULLIVAN The business address of the registered agent and the registered office address is 12274 COSTA BRAVA EL PASO TEXAS 79938

ARTICLE FIVE

The purpose or purposes for which the Association is organized are

1 To provide for maintenance preservation and architectural control of the Lots Common Area and Private Drives (the Property) within that certain tract of property described as Lots 1 through 92 94 95 96 97 98 and 99 Block 1 BARCELONA ESTATES SUBDIVISION an addition to the City of El Paso El Paso County Texas according to the map thereof on file under Clerk s File No 20050038049 of the Real Property Records of El Paso County Texas as replated and now known as BARCELONA ESTATES SUBDIVISION Replat A (the Maps) and which includes Common areas and private drives all as reflected on the Maps and any and all other properties which may be annexed thereto in accordance with the provisions of the Declaration of Covenants Conditions and Restrictions for BARCELONA ESTATES SUBDIVISION filed of record under document #20050038052 and restated under document #20060082499 as amended Real Property Records of El Paso County Texas and as further restated or amended thereafter (the Declaration)

2 To promote the health safety and welfare of the Members within the above described Property

5 3 To exercise any and all powers rights and privileges which a nonprofit corporation organized under the Texas Business Organizations Code may now or hereafter have or exercise

5 4 To exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration and all Supplementary Declarations applicable to the Property and recorded in the Office of the County Clerk Real Property records of El Paso County Texas as the same may be amended from time to time as therein provided said Declaration being incorporated herein as if set forth at length

5 5 To acquire own hold maintain manage lease pledge convey transfer or dedicate real or personal property for the benefit of the Members in connection with the affairs of the Association

5 6 To establish rules and regulations for the use of the Property for the benefit of the Members

5 7 To fix levy and collect assessments

5 8 To pay all expenses incident to the conduct of business of the Association

5 9 To employ enter into contract with delegate authority to and supervise such persons or entities as may be appropriate to manage conduct and perform the business obligations and duties of the Association

5 10 To participate in mergers and consolidations with other associations

5 11 To perform such acts as may be reasonably necessary or appropriate including bringing suit causing a lien to be foreclosed or suspending membership rights to enforce or effectuate any of the provisions of the Declaration and all Supplementary Declarations this Certificate of Formation or the Bylaws

5 12 To regulate the external design appearance and locations of the Lots and improvements thereon in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography

5 13 To obtain maintain repair preserve upkeep and protect the Common Areas and the Private Drives in the Subdivision

5 14 To serve as a property owners association as defined in Section 202.001 of the Texas Property Code

5 15 To serve as a nonprofit corporation as defined under the Texas Tax Code and Texas law and

5 16 At the Board of Trustees election to be operated within the meaning of Section 528 or 501(c) of the Internal Revenue Code of 1986 as amended

ARTICLE SIX

6.1 The Association shall not have or issue shares of stock or pay dividends but it will have Members

6.2 Each Owner whether one or more persons or entities of a Lot shall upon and by virtue of becoming such Owner automatically become a Member of the Association and shall remain a Member thereof until his or her ownership ceases for any reason at which time his or her membership in the Association shall automatically cease except that such termination shall not release or relieve any such person or entity from any liability or obligation incurred under the Declaration during the period of such person's or entity's ownership nor impair any rights or remedies which the Association or any other Owner may have with regard to such former Owner. Membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of each Lot and may not be separated from such ownership. Whenever the legal ownership of any Lot passes from one person to another by whatever means it shall not be necessary that any instrument provide for transfer of membership in the Association and no certificate of membership will be issued.

6.3 The Association shall have two classes of voting membership

6.3.1 Class A The Class A Members shall be all Owners with the exception of the Declarant. After the Conversion Date as defined below in subsection 5.3.2 Declarant shall also become a Class A Member to the extent Declarant is an Owner of a Lot or Lots.

6.3.2 Class B The Class B Member shall be the Declarant. The Class B membership of Declarant shall cease and become converted to Class A membership upon occurrence of the earlier of the following (the Conversion Date):

- (a) When Declarant has sold or leased for a term in excess of forty (40) years its interest in all the Lots to unrelated third parties. A sale or a lease for such term to an unrelated third party shall include a sale or lease to joint ventures or partnerships that include Declarant as a co-venturer or partner.
- (b) Three (3) years after the first Lot in the Subdivision is conveyed to an unrelated third party or
- (c) Such earlier date as may be established by Declarant in a Supplemental Declaration to be recorded by Declarant.

6.4 Except as provided otherwise by law where a vote of the Members is required the Board shall determine by resolution whether the question shall be decided by ballot vote at a meeting or by mail or at polling places designated by the Board and the Board shall give notice thereof as provided in the Bylaws.

ARTICLE SEVEN

7.1 The Association shall initially act through a three member Board of Trustees (or Board or Board of Trustees collectively or Trustee individually) which shall manage the affairs of the Association. The initial Board of Trustees of the Association shall be selected by Declarant. Each initial Trustee shall serve until the Conversion Date. The Declarant may replace any Trustee until the Conversion Date and thereafter until his or her successor is duly elected and qualified as provided in the Bylaws of the Association. After the Conversion Date the Members shall elect a three member Board of Trustees as provided for in the Bylaws. Any vacancy from whatever cause other than removal occurring in the Board of Trustees shall be filled by appointment made by the remaining Trustee or Board of Trustees. The person appointed by the remaining Trustee or Board of Trustees to fill such vacancy shall serve for the remainder of the initial term and until his or her successor is duly elected and qualified. All actions taken by the Board of Trustees shall be by majority vote. The number of Board of Trustees constituting the initial Board of Trustees is three (3) and the names and addresses of the person who are to serve as the initial Trustees are

<u>NAME</u>	<u>ADDRESS</u>
RAQUEL S KANGUR	12274 COSTA BRAVA EL PASO TEXAS 79938
GENE F SULLIVAN	12274 COSTA BRAVA EL PASO TEXAS 79938
EDDIE URQUIDI	12274 COSTA BRAVA EL PASO TEXAS 79938

ARTICLE EIGHT

8.1 The Association may be dissolved with the assent given in writing and signed by not less than two thirds (2/3) of the votes of the Members.

8.2 Invalidation of of this Certificate of Formation or sections or articles by judgment or court order shall in no way effect any other provisions which shall remain in full force and effect.

ARTICLE NINE INDEMNIFICATION

9.1 May Indemnify Indemnification, Trustees or Officers The Association may indemnify any person or the estate of any deceased person (such person or estate of any deceased person being hereafter throughout this Article referred to as "Person") 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 civil, criminal, administrative, arbitrative or investigative (hereafter throughout this Article Eight collectively referred to as "Proceeding") by reason of the fact that he or she is or was a Trustee or officer of the Association or is or was serving at the request of the Association as a Trustee, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, trust, sole proprietorship, employee benefit plan or other enterprise (hereafter throughout this Article Eight collectively referred to as "Trustee") against expenses (including reasonable attorneys' fees) actually and

reasonably incurred by him or her and against judgments penalties (including excise and similar taxes) fines and amounts paid in settlement by him or her in connection therewith if he or she acted in good faith and in a manner he or she reasonably believed in the case of conduct in his or her official capacity as defined in Texas Business Organizations Code (Official Capacity) to be in the best interests of the Association or in all other cases to be not opposed to the best interests of the Association and, with respect to any criminal Proceeding if he or she had no reasonable cause to believe his or her conduct was unlawful provided however that if he is found liable to the Association or is found liable on the basis that personal benefit was improperly received by him or her the indemnification provided pursuant to this Section is limited to expenses actually and reasonable incurred by him or her in connection with the Proceeding and (11) may not be made in respect of any Proceeding in which he or she has been found liable for willful or intentional misconduct in the performance of his or her duties to the Association

The termination of any Proceeding by judgment order settlement conviction or upon a plea of nolo contendere or its equivalent, will not of itself create a presumption that the Person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Association or with respect to any criminal Proceeding that he or she had reasonable cause to believe that his or her conduct was unlawful A Person will be deemed to have been found liable in respect to any claim issue or matter only after the Person has been so adjudged by a court of competent jurisdiction after exhaustion of all appeals

9.2 Indemnification Procedure Any indemnification under of this Article (unless ordered by a court or made pursuant to a determination by a court) may be made by the Association only as authorized in the specific cause upon a determination that indemnification of the Person is proper under the circumstances because the Person has met the applicable standard of conduct set forth in Section 9.1 Such determination will be made

(a) By a majority vote of a quorum consisting of Trustees who at the time of the vote are not named defendants or respondents in the Proceeding

(b) If such quorum cannot be obtained by a majority vote of a committee of the Board of Trustees designated to act in the matter by a majority vote of all Trustees consisting solely of two or more Trustees who at the time of the vote are not named defendants or respondents in the Proceeding or

(c) By special legal counsel selected by the Board of Trustees or a committee of the Board by a vote as set forth in (a) or (b) immediately foregoing or if such a quorum cannot be obtained and such a committee cannot be established by a majority vote of all Trustees

9.3 Authorization of Payment

(a) Authorization of indemnification and determination as to reasonableness of expenses will be made in the same manner as the determination that indemnification is permissible except that if special legal counsel makes the latter determination authorization of indemnification and determination as to reasonableness of expenses must be made

- (1) By a majority vote of a quorum consisting of Trustees who at the time of the vote are not named defendants or respondents in the Proceeding or
- (2) If such a quorum cannot be obtained by a majority vote of a committee of the Board of Trustees designated to act in the matter by a majority vote of all Trustees consisting solely of two or more Trustees who at the time of the vote are not named defendants or respondents in the Proceeding or
- (3) If such a committee cannot be established by a majority vote of all Trustees

9 4 Advancement of Expenses

Expenses incurred in defending such Proceeding may be paid by the Association in advance of the final disposition of the Proceeding without any of the authorizations or determinations specified in this Article upon receipt of a written affirmation by the Person of his good faith belief that he or she has met the standard of conduct necessary for indemnification under applicable law and a written undertaking by or on behalf of the Person to repay such amount unless it ultimately is determined that he or she is entitled to be indemnified by the Association as authorized in this section. The written undertaking must be an unlimited general obligation of the Person but need not be secured. It may be accepted without reference to financial ability to make payment.

9 5 Other Rights The indemnification provided by these Bylaws may not be deemed exclusive of any other rights to which a Person seeking indemnification may be entitled under the Articles of Incorporation these Bylaws a resolution of Trustees an agreement or otherwise both as to action in his Official Capacity and as to action in any other capacity and will continue as to such Person after the termination of such capacity and will inure to the benefit of his heirs executors and administrators provided however that any provision for the Association to indemnify or to advance expenses to a Trustee whether contained in the Articles of Incorporation these Bylaws a resolution of Trustees an agreement or otherwise except in accordance with this Article is valid only to the extent it is consistent with the Texas Business Organizations Code as limited by this Certificate of Formation if such a limitation exists.

9 6 Insurance The Association may purchase and maintain insurance on behalf of any Person by reason of the fact that he or she is or was serving at the request of the Association as a Trustee or employee or agent of the Association against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as a Person whether or not the Association would have the power to indemnify him or her against such liability under the Texas Business Organizations Code.

ARTICLE TEN

If the Board of Trustees determines this Association is to be operated as a 501(c) organization no substantial part of the activities of the Association shall be devoted to attempting to influence legislation by propaganda or otherwise within the meaning of the proscriptive provisions of the Internal Revenue Code of 1986 as amended. The Association shall not directly or indirectly participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of or in opposition to any candidate for public office. If the Association is operated under Section 501(c) of the Internal Revenue Code of 1986 as amended, upon the dissolution of the Association the Board of Trustees shall after paying or making provision for the payment of all the liabilities of the Association dispose of all the assets of the Association to such organization or organizations organized and operated exclusively for charitable educational religious or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c) of the Internal Revenue Code or the corresponding section of any future Federal tax code as the Board of Trustees shall determine. Any of such assets not so disposed of shall be disposed of by a district court of the county in which the principal office of the Association is then located exclusively for such purposes or to such organization or organizations as said court shall determine which are organized and operated exclusively for such purposes.

ARTICLE ELEVEN

Unless otherwise noted in this Certificate of Formation to the contrary the terms defined in the Declaration are the defined terms used in this Certificate of Formation.

ARTICLE TWELVE**EXECUTION**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date 5-26-2010


 GENE F SULLIVAN