

No 3000002511

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP

☐ WAIT

☐ MAIL

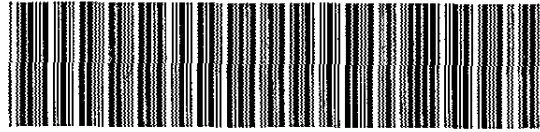
(Business Entity Name)

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CORPORATIONS  
TALLAHASSEE, FLORIDA

F. CHESLER

MAR 24

7/7/03

## ATTORNEYS' TITLE

Requestor's Name

1965 Capital Circle NE, Suite A

Address

Tallahassee, Fl 32308 - 850-222-2785

City/St/Zip

Phone #

### CORPORATION NAME(S) & DOCUMENT NUMBER(S), (if known):

1- WHISPERING CREEK HOMEOWNERS ASSOCIATION III, INC.

2-

3-

4-

☒ Walk-in

☐ Pick-up time ASAP

☐ Certified Copy

☐ Mail-out

☐ Will wait

☐ Photocopy

☐ Certificate of Status

#### NEW FILINGS

<input type="checkbox"/>	Profit
<input checked="" type="checkbox"/>	Non-Profit
<input type="checkbox"/>	Limited Liability
<input type="checkbox"/>	Domestication
<input type="checkbox"/>	Other

#### AMENDMENTS

<input type="checkbox"/>	Amendment
<input type="checkbox"/>	Resignation of R.A., Officer/Director
<input type="checkbox"/>	Change of Registered Agent
<input type="checkbox"/>	Dissolution/Withdrawal
<input type="checkbox"/>	Merger

#### OTHER FILINGS

<input type="checkbox"/>	Annual Report
<input type="checkbox"/>	Fictitious Name
<input type="checkbox"/>	Name Reservation

#### REGISTRATION/QUALIFICATION

<input type="checkbox"/>	Foreign
<input type="checkbox"/>	Limited Partnership
<input type="checkbox"/>	Reinstatement
<input type="checkbox"/>	Trademark
<input type="checkbox"/>	Other

Examiner's Initials

ARTICLES OF INCORPORATION  
OF  
WHISPERING CREEK HOMEOWNERS ASSOCIATION III, INC.  
A FLORIDA CORPORATION NOT FOR PROFIT

FILED  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA  
03 MAR 21 PM 12:05

The undersigned hereby forms a corporation, not-for-profit, under the laws of the State of Florida, pursuant to and by virtue of the following Articles of Incorporation:

ARTICLE 1 - NAME

The name of this corporation shall be WHISPERING CREEK HOMEOWNERS ASSOCIATION III, INC. (the "Association"), and it shall be located in Volusia County, Florida. The street address of the corporation's initial registered office and mailing address of the corporation are 114 South Palmetto Avenue, Daytona Beach, Florida, 32114.

ARTICLE II - PURPOSES AND POWERS

The general purpose or purposes for which the Association is formed are as follows:

- (a) To acquire, own, equip, manage, maintain, and repair the common area, including but not limited to the private roadways, bridal paths, utility easements and drainage easements, of WHISPERING CREEK SUBDIVISION PHASE III, in Volusia County, Florida, for the benefit of the members of the Association upon such terms and conditions so as to meet the expense thereof;
- (b) To enforce the Covenants and Restrictions of WHISPERING CREEK SUBDIVISION PHASE III, that are or will be recorded in the public records of Volusia County, Florida;

(c) To establish and collect assessments from the owners of lots within WHISPERING CREEK SUBDIVISION PHASE III, for the purpose of operating, maintaining, insuring, and improving the properties of the Association and to enforce liens for such assessments, by legal action, if necessary, including but not limited to levy and collection adequate assessments against members of the Association for the costs of maintenance and operation of the surface water or stormwater management system. The assessments shall be used for the maintenance and repair of the surface water or stormwater management systems including but not limited to work within retention areas, drainage structures and drainage easements;

(d) To purchase and maintain such personal property as may be necessary or useful in the conduct of the Association's business; and

(e) In furtherance of the foregoing, to engage in any activity permitted to a corporation not-for-profit under Chapter 720 and Chapter 617, Florida Statutes (2001). Said sections shall apply to this Association unless otherwise in conflict with, or otherwise stated, or excepted by these Articles or the Bylaws of the Association.

All of the Association's assets and earnings shall be used exclusively for the purposes set forth herein and no part of the assets or the net earnings of this Association shall inure to the benefit of any individual member or other person. The Association may, however, reimburse its members for actual expenses incurred for or in behalf of the Association and may pay compensation in a

reasonable amount to its members for actual services rendered to the Association as permitted by law.

(f) To operate, maintain and manage the surface water or stormwater management system(s) in a manner consistent with the applicable St. Johns River Water Management District permit including but not limited to requirements and applicable District rules, and shall assist in the enforcement of the restrictions and covenants contained therein.

#### ARTICLE III - MEMBERS

As is set forth in the Covenants and Restrictions and as may be regulated by the Bylaws, every person or entity who is a record owner of a fee or undivided fee interest in any lot or lots within the development known as WHISPERING CREEK SUBDIVISION PHASE III, who shall pay the normal and any special assessments which may from time to time be fixed by the Board of Directors of the Association, shall be a member of the Association. The foregoing shall not include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be on the terms and conditions as set forth herein and as regulated by the Board of Directors of the Association, and it shall be appurtenant to and may not be separated from the ownership of any lot in WHISPERING CREEK SUBDIVISION PHASE III. Diane Lapham, President of Ava & Rufus, Inc., a Florida corporation, as developer, shall be a member as set forth in Article V below.

#### ARTICLE IV - TERM

This Association shall have perpetual existence.

#### ARTICLE V - VOTING

The Association shall have one class of voting membership made up of all the record owners of fee title to any lot or lots in WHISPERING CREEK SUBDIVISION PHASE III, including the developer, Diane Lapham, President of Ava & Rufus, Inc., who qualify as set forth in Article III. Each member shall be entitled to one vote for each lot owned in the respective subdivisions for which they own a lot. When more than one person or entity holds an ownership interest in any lot, all such persons shall be members. The vote for such lot shall be exercised by only one member, however, designated in writing to the Association. In no event shall more than one vote be cast with respect to any one lot. The developer shall retain its membership and at least one vote until such time as any amounts owed to it by the Association are paid in full.

#### ARTICLE VI - INCORPORATOR/REGISTERED AGENT

The name and residence address of the incorporator and initial Registered Agent to these Articles of Incorporation are:

Michael A. Van Houten

114 South Palmetto Avenue  
Daytona Beach, FL 32114

#### ARTICLE VII - MANAGEMENT

The affairs and business of the Association shall be managed by a Board of Directors and by the following officers: President, Vice President, Secretary, and Treasurer, and such other officers as the Board shall appoint. The officers shall be elected by the Board at the first meeting of the Board following the annual meeting of the Association. The President shall be a director but no other officer need be a director. The same person may hold one or more offices.

## ARTICLE VIII - OFFICERS

Diane Lapham	President
Charles Kleinschmidt	Vice President, Secretary, Treasurer

## ARTICLE IV - DIRECTORS

Section 1. The Association shall have three directors initially. The number of directors may be either increased or diminished from time to time as provided by the Bylaws but shall never be less than three.

Section 2. The names and addresses of the persons who are to serve on the first Board are:

Diane Lapham	2552 Tomoka Farms Road Daytona Beach, FL 32124
Charles Kleinschmidt	721 S. Kirkman Road Orlando, FL 32811
Elizabeth L. Kleinschmidt	721 S. Kirkman Road Orlando, FL 32811

Section 3. The initial directors shall serve until the first annual meeting of the Association, and thereafter as provided in Section 4 below.

Section 4. The developer shall comply with Florida Statutes Section 720.307 in relation to transition of association control in a community. Until the first meeting three months following the date on which the developer has been paid in full any sums owed it by the Association and has conveyed away more than ninety percent (90%) of the lots within WHISPERING CREEK SUBDIVISION PHASE III, the developer shall appoint at least two of the three members of the Board who shall serve at the pleasure of the developer. The

members of the Association other than the developer may elect the remaining member of the Board. At the first meeting three months following the date on which the developer has been paid in full and has conveyed away ownership of more than ninety percent (90%) of the lots within WHISPERING CREEK SUBDIVISION PHASE III, the members of the Association including the developer shall elect the members of the Board by a plurality of the votes cast at such election. The developer reserves the right to turn over at an earlier date. At the first election by the full membership of replacements for the directors appointed by the developer, such directors shall be elected to terms so that each year for the following three (3) years the term of one (1) of the three (3) directors shall expire. Thereafter all directors shall serve for terms of three (3) years. It is the intent of this Section that following the expiration of the power of appointment by the developer and the election of a full Board, one (1) director's term will expire each year.

Section 5. In the event of the removal, resignation, death, or other vacancy of a director the vacancy shall be filled by the developer if such director had been appointed by the developer, otherwise it shall be filled by the Board. The replacement director shall serve the remainder of the term of the predecessor.

Section 6. No member of the Board or any committee of the Association or any officer of the Association, or the developer, or any employee of the Association, shall be personally liable to any member of the Association, or to any other party, including the Association, for any damage, loss or prejudice



suffered or claimed on account of any act, omission, error or negligence of such person or group, provided that such person or group has, upon the basis of such information as may be possessed by said person(s), acted in good faith, without willful or intentional misconduct.

Section 7. The Board of Directors shall determine the amounts of the normal and special assessments for each subdivision. The assessment shall be assessed equally against all lots within the respective subdivisions of WHISPERING CREEK SUBDIVISION PHASE III but not in such an amount that would cause the Association to be in violation of Chapter 720 Florida Statutes. Where there are multiple owners of any lot or lots such owners shall be jointly and severally liable for the payment of the assessments. In establishing the amount of the assessments, the Board may not provide that a member shall pay no assessments. The assessments shall be fixed by the Board annually and shall be based upon the costs and expenses expected to be insured in owning, operating, maintaining, and improving Association properties in the coming year and on the establishment of reasonable reserves for future use as deemed advisable by the Board. The normal assessments may include any amounts to cover deficiencies from the previous year, or, at the end of each year the Board as an alternative to increasing the coming year's assessments, may make a special assessment above and beyond the annual assessment if the costs and expenses of owning, operating, maintaining, and improving Association properties in that year exceeded the amount of the normal assessments and other income earlier received by the Association.

#### ARTICLE X - BYLAWS

The first Bylaws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded by a majority of the members as provided in the Bylaws.

#### ARTICLE XI - AMENDMENTS

Amendments to the Articles of Incorporation shall be approved by the Board of Directors, proposed by them to the members and approved at the meeting by a two-thirds (2/3rds) vote of the members present, provided that not less than thirty (30) days notice by mail shall have been given to all of the members setting forth the proposed amendment.

#### ARTICLE XII - DISSOLUTION

In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the surface water or stormwater management system must be transferred to and accepted by an entity which would comply with Section 40C-42.027, F.A.C., and be approved by the St. Johns River Water Management District prior to such termination, dissolution or liquidation.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal at Daytona Beach, Florida, this 17 day of March, 2003.

  
Michael A. Van Houten

STATE OF FLORIDA  
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 17 day of March, 2003, by Michael A. Van Houten, who is personally known to me or who produced the following type of identification: Personally Known.



Robin C. Schmidt  
Notary Public  
My Commission Expires:

HAVING BEEN NAMED TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE-STATED CORPORATION, AT THE PLACE DESIGNATED HEREIN, I HEREBY AGREE TO ACT IN THIS CAPACITY, AND I FURTHER AGREE TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATIVE TO THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES, AND I ACCEPT THE DUTIES AND OBLIGATIONS OF SECTION 607.325 FLORIDA STATUTES.

Michael A. Van Houten  
Michael A. Van Houten,  
Registered Agent

Dated: 3/17/03

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