

NO5000011333

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP

☐ WAIT

☐ MAIL

(Business Entity Name)

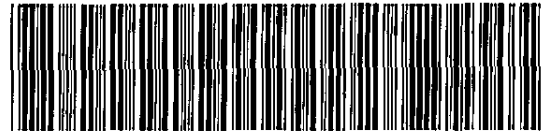
(Document Number)

Certified Copies _____ Certificates of Status _____

Special Instructions to Filing Officer:

Office Use Only

D. WHITE NOV - 8 2005



300060998213

RECEIVED

NOV - 7 A D 53

FILED



CORPORATION SERVICE COMPANY

ACCOUNT NO. : 072100000032

REFERENCE : 692461 11109C

AUTHORIZATION :

COST LIMIT :

\$ 78.75

Patricia [signature]

ORDER DATE : November 7, 2005

ORDER TIME : 10:03 AM

ORDER NO. : 692461-005

CUSTOMER NO: 11109C

DOMESTIC FILING

NAME: WHISPER CREEK HOMEOWNERS'
ASSOCIATION, INC.

EFFECTIVE DATE:

XX ARTICLES OF INCORPORATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY

CONTACT PERSON: Jamela Fordyce - EXT. 2936

EXAMINER'S INITIALS: _____

**ARTICLES OF INCORPORATION
OF
WHISPER CREEK HOMEOWNERS' ASSOCIATION, INC.**

FILED

2005 NOV -1 A 10:53

The undersigned incorporator, for the purpose of forming a corporation not-for-profit pursuant to the laws of the State of Florida, Florida Statutes, Chapter 617, hereby adopts the following Articles of Incorporation:

PREAMBLE

WHISPER CREEK PROPERTIES, LLC, a Florida limited liability company ("Declarant"), owns certain property (the "Subject Property"), and intends to execute and record a Declaration of Covenants and Restrictions of Whisper Creek (the "Declaration") which will affect the Subject Property. This association is being formed as the association to administer the Declaration, and to perform the duties and exercise the powers pursuant to the Declaration, as and when the Declaration is recorded in the Public Records with these Articles of Incorporation attached as an exhibit. All of the definitions contained in the Declaration shall apply to these Articles of Incorporation, and to the Bylaws of the Association.

**Article 1
NAME AND ADDRESS**

The name of the corporation is Whisper Creek Homeowners' Association, Inc., hereinafter referred to as the "Association." The initial address of the principal office of the Association and the initial mailing address of the Association is 3745 N. State Road 29, SW, LaBelle, FL 33935.

**Article 2
NOT FOR PROFIT**

The Corporation is a corporation not for profit as defined in Chapter 617 of the Florida Statutes. The Corporation is not formed for pecuniary profit. No part of the income or assets of the Corporation is distributable to or for the benefit of its Members, Directors or Officers, except to the extent permissible under law.

**Article 3
DURATION**

The duration of the Corporation is perpetual.

Article 4 PURPOSES

The purposes for which the Association is organized are as follows:

- 4.1** To operate as a corporation not-for-profit pursuant to Chapter 617 of the Florida Statutes.
- 4.2** To enforce and exercise the duties of the Association as provided in the Declaration.
- 4.3** To promote the health, safety, welfare, comfort, and social and economic benefit of the members of the Association.
- 4.4** To do such other things as are incidental to the purposes of the Association necessary or desirable in order to accomplish them.

Article 5 MEMBERS

5.1 The members of the Association shall consist of all of the record owners of Lots. Membership shall be established as to each Lot upon the recording of the Declaration. Upon the transfer of ownership of fee title to, or fee interest in, a Lot, whether by conveyance, devise, judicial decree, foreclosure, or otherwise, and upon the recordation amongst the public records in the county in which the Subject Property is located of the deed or other instrument establishing the acquisition and designating the Lot affected thereby, the new Owner designated in such deed or other instrument shall thereupon become a member of the Association, and the membership of the prior Owner as to the Lot designated shall be terminated, provided, however, that the Association shall not have the responsibility or obligation of recognizing any such change in membership until it has been delivered a true copy of the applicable deed or other instrument, or is otherwise informed of the transfer of ownership of the Lot. Prior to the recording of the Declaration, the incorporator shall be the sole member of the Association.

5.2 The share of each member in the funds and assets of the Association, and the Common Surplus, and any membership in this Association, cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Lot for which that membership is established.

5.3 On all matters upon which the membership shall be entitled to vote, there shall be only one vote for each Lot. In the event any Lot is owned by more than one person and/or by an entity, the vote for such Lot shall be cast in the manner provided by the Bylaws. Any person or entity owning more than one Lot shall be entitled to one vote for each Lot owned. In addition to the foregoing, Declarant shall have three votes for each vote of any member other than Declarant so long as Declarant is entitled to appoint the Directors of the Association.

5.4 The Bylaws shall provide for an annual meeting of the members of the Association and shall make provision for special meetings.

Article 6

Board OF DIRECTORS

6.1 The property, business and affairs of the Association shall be managed by a Board which shall consist of not less than three (3) directors, and which shall always be an odd number. The Bylaws may provide for a method of determining the number of directors from time to time. In the absence of a determination as to the number of directors, the Board shall consist of three (3) directors. Directors are not required to be members of the Association.

6.2 All of the duties and powers of the Association existing under the Declaration, these Articles and the Bylaws shall be exercised exclusively by the Board, its agents, contractors or employees, subject to approval by the members only when specifically required.

6.3 Initially, Declarant shall have the right to appoint all of the directors. Members other than Declarant shall be entitled to elect not less than a majority of the directors three (3) months after ninety (90%) percent of the Lots that will be operated ultimately by the Association have been conveyed to purchasers. Declarant is entitled to elect at least one director as long as Declarant holds for sale in the ordinary course of business at least five (5%) percent of the Lots within the Subject Property, including any property described in the Declaration that may be added to the Subject Property, and thereafter all of the directors shall be elected by the members in the manner provided in the Bylaws. Declarant may waive its right to elect one or more directors by written notice to the Association, and thereafter such directors shall be elected by the members. Following the time that Declarant relinquishes control of the Association, Declarant may exercise the right to vote any Declarant-owned Lots in the same manner as any other Owner, except for purposes of re-acquiring control of the Association or selecting a majority of the directors. Notwithstanding the foregoing, members other than Declarant shall at all times have the right to elect the minimum number of directors as may be required by any applicable statute.

6.4 Directors may be removed and vacancies on the Board shall be filled in the manner provided by the Bylaws, however any director appointed by Declarant may only be removed by Declarant, and any vacancy on the Board shall be appointed by Declarant if, at the time such vacancy is to be filled, Declarant is entitled to appoint the directors.

6.5 The names and addresses of the initial Board are as follows:

Leo J. Cavin
c/o 3745 N. State Road 29 SW
LaBelle, FL 33935

William J. Cavin
c/o 3745 N. State Road 29 SW
LaBelle, FL 33935

Darrell L. Christenson
c/o 3745 N. State Road 29 SW
LaBelle, FL 33935

Walter A. Shirley
c/o 3745 N. State Road 29 SW
LaBelle, FL 33935

Article 7 OFFICERS

The officers of the Association shall be a president, vice president, secretary, treasurer and such other officers as the Board may from time to time by resolution create. The officers shall serve at the pleasure of the Board, and the Bylaws may provide for the removal from office of officers, for filling vacancies, and for the duties of the officers.

Article 8 INDEMNIFICATION

8.1 The Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director, employee, officer or agent of the Association, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, if he had no reasonable cause to believe his conduct was unlawful; except, that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misfeasance or malfeasance in the performance of his duties to the Association unless and only to the extent that the court in which the action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, in and of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

8.2 To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraph 1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

8.3 Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the directors, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized herein.

8.4 The indemnification provided herein shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any Bylaw, agreement, vote of members or otherwise, and as to action taken in an official capacity while holding office, shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

8.5 The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, as arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

Article 9 Bylaws

The first Bylaws shall be adopted by the Board and may be altered, amended or rescinded by Declarant, the Directors and/or members in the manner provided by the Bylaws.

Article 10 AMENDMENT

Amendments to these Articles shall be proposed and adopted in the following manner:

10.1 A majority of the Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the members, which may be the annual or a special meeting.

10.2 Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to Vote thereon within the time and in the manner provided in the Bylaws for the giving of notice of a meeting of the members. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

10.3 At such meeting, a vote of the members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the votes of the entire membership of the Association.

10.4 Any number of amendments may be submitted to the members and voted upon by them at any one meeting.

10.5 Notwithstanding anything contained herein to the contrary, so long as Declarant owns any Lot within the Subject Property, Declarant shall have the right to amend these Articles without the consent or joinder of any other Owner or any Institutional Lender. There shall be no amendment that would make any changes that would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, Declarant, unless Declarant shall join in the execution of the amendment, including, but not limited to, any right of Declarant to appoint directors pursuant to Article 6.

10.6 No amendment shall make any changes in the qualifications for membership nor in the voting rights of members without approval by all of the members and the joinder of all Institutional Lenders holding mortgages upon the Lots. No amendment shall be made that is in conflict with the Declaration. Prior to the closing of the sale of all Lots within the Subject Property, no amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, Declarant, unless Declarant shall join in the execution of the amendment, including, but not limited to, any right of Declarant to appoint directors pursuant to Article 6.

10.7 No amendment to these Articles shall be made which discriminates against any Owner(S), or affects less than all of the OwnerS within the Subject Property, without the written approval of all of the OwnerS so discriminated against or affected.

10.8 Upon the approval of an amendment to these Articles, the articles of amendment shall be executed and delivered to the Department of State as provided by law,- and a copy certified by the Department of State shall be recorded in the public records of the county in which the Subject Property is located.

Article 11 NONSTOCK BASIS

The Association is organized and shall be operated on a nonstock basis and shall not have the power to issue shares of any type or class of stock or other certificates or writings evidencing an ownership or proprietary interest in the Association.

Article 12

INDEMNIFICATION

12.1 The Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director, employee, officer or agent of the Association. Said indemnification shall pertain to expenses incurred, including without limitation, attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, if he had no reasonable cause to believe his conduct was unlawful. However, no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misfeasance or malfeasance in the performance of his duties to the Association unless and only to the extent that the court in which the action or suit was brought shall determine. Notwithstanding same, indemnification shall be available if said court, upon application, finds that despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

12.2 To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraph 1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

12.3 Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board in the specific case upon receipt of an undertaking by or on behalf of the directors, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized herein.

12.4 The indemnification provided herein shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any Bylaw, agreement, vote of members or otherwise, and as to action taken in an official capacity while holding office, shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

12.5 The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, as arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

Article 13 AMENDMENT

Amendments to these Articles shall be proposed and adopted in the following manner:

13.1 A majority of the Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the members, which may be the annual or a special meeting.

13.2 Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to Vote thereon within the time and in the manner provided in the Bylaws for the giving of notice of a meeting of the members. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

13.3 At such meeting, a vote of the members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a majority of the votes of the entire membership of the Association.

13.4 Any number of amendments may be submitted to the members and voted upon by them at any one meeting.

13.5 Notwithstanding anything contained herein to the contrary, so long as Declarant owns any Lot within the Subject Property, Declarant shall have the right to amend these Articles without the consent or joinder of any other Owner or any Institutional Lender and no amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, Declarant, unless Declarant shall join in the execution of the amendment, including, but not limited to, any right of Declarant to appoint directors pursuant to Article 7.

13.6 No amendment shall make any changes in the qualifications for membership nor in the voting rights of members without approval by all of the members and the joinder of all Institutional Lenders holding mortgages upon the Lots. No -amendment shall be made that is in conflict with the Declaration. Prior to the closing of the sale of all Lots within the Subject Property, no amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, Declarant, unless

Declarant shall join in the execution of the amendment, including, but not limited to, any right of Declarant to appoint directors pursuant to Article 7.

13.7 No amendment to these Articles shall be made which discriminates against any Owner(S), or affects less than all of the OwnerS within the Subject Property, without the written approval of all of the OwnerS so discriminated against or affected.

13.8 Upon the approval of an amendment to these Articles, the articles of amendment shall be executed and delivered to the Department of State as provided by law,- and a copy certified by the Department of State shall be recorded in the public records of the county in which the Subject Property is located.

Article 14

COMMENCEMENT OF CORPORATE EXISTENCE

Corporate existence shall commence on the part of the Association shall be on the date of the filing of these Articles of Incorporation with the Secretary of State of Florida pursuant to Section 617.0123, Florida Statutes.

Article 15

INCORPORATOR

The name and street address of the incorporator is: Steven P. Kushner, Esq., 14241 Metropolis Avenue, Suite 100, Ft. Myers, Florida 33912.

Article 13

INITIAL REGISTERED OFFICE, ADDRESS AND NAME OF REGISTERED AGENT

The initial registered office of this Corporation shall be at 14241 Metropolis Avenue, Suite 100, Ft. Myers, Florida 33912, with the privilege of having its office and branch offices at other places within or without the State of Florida. The initial registered agent of the Corporation shall be Becker & Poliakoff, P.A., who shall also be a resident agent, whose address is 14241 Metropolis Avenue, Suite 100, Ft. Myers, Florida 33912.

CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE FOR
THE SERVICE OF PROCESS WITHIN THIS STATE, NAMING AGENT
UPON WHOM PROCESS MAY BE SERVED

In compliance with the laws of Florida, the following is submitted:

That desiring to organize under the laws of the State of Florida with its principal office, as indicated in the foregoing Articles of Incorporation, in the County of Lee, State of Florida, the corporation named in the said Articles has named Becker & Poliakoff, P.A., whose address is 14241 Metropolis Avenue, Suite 100, Ft. Myers, Florida 33912, as its statutory registered agent.

Having been named the statutory agent of said corporation at the place designated in this certificate, I hereby accept the same and agree to act in this capacity, and agree to comply with the provisions of Florida law relative to keeping the registered office open.

BECKER & POLIAKOFF, P.A.
REGISTERED AGENT

By: 

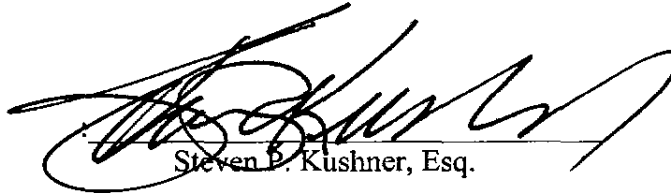
Steven P. Kushner

DATED this 4th day of November, 2005.

This instrument was prepared by:
Steven P. Kushner, Esq.
Becker & Poliakoff, P.A.
14241 Metropolis Avenue, Suite 100
Ft. Myers, Florida 33912
Florida Bar No. 351210

291170_1.DOC

IN WITNESS WHEREOF, the Incorporator has affixed his signature the day and year set forth below.

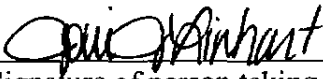

Steven P. Kushner, Esq.

DATED: _____
(SEAL)

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 4 day of November, 2005, by Steven P. Kushner, Esq., who is personally known to me or who has produced _____
(type of identification) as identification.




Signature of person taking acknowledgment

Joni J. Linhart
Name typed, printed or stamped

My commission expires:

9/25/09

FILED
2005 NOV -7 A 10:53
TALLAHASSEE, FLORIDA