

N29897

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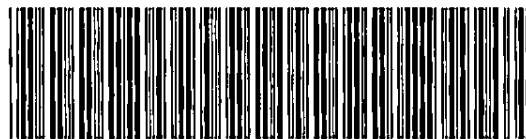
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TALLAHASSEE, FLORIDA

OCT 03 2018
S. YOUNG

COVER LETTER

TO: Amendment Section
Division of Corporations

NAME OF CORPORATION: BRIARCREST HOMEOWNER'S ASSOCIATION, INC.

DOCUMENT NUMBER: N29897

The enclosed *Articles of Amendment* and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

CHRISTOPHER J. SHIELDS

(Name of Contact Person)

PAVESE LAW FIRM

(Firm/ Company)

1833 HENDRY STREET

(Address)

FORT MYERS, FL 33901

(City/ State and Zip Code)

KERRI.TONKIN@GMAIL.COM

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

CHRISTOPHER J. SHIELDS

239

336-6245

at

(Name of Contact Person)

(Area Code)

(Daytime Telephone Number)

Enclosed is a check for the following amount made payable to the Florida Department of State:

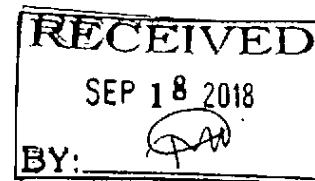
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|------------------------------------------|------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> \$35 Filing Fee | <input type="checkbox"/> \$43.75 Filing Fee &
Certificate of Status | <input checked="" type="checkbox"/> \$43.75 Filing Fee &
Certified Copy
(Additional copy is
enclosed) | <input type="checkbox"/> \$52.50 Filing Fee
Certificate of Status
Certified Copy
(Additional Copy is
Enclosed) |
|------------------------------------------|------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|

Mailing Address

Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

Street Address

Amendment Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301



ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
BRIARCREST HOMEOWNER'S ASSOCIATION, INC.

Name of Corporation: BRIARCREST HOMEOWNER'S ASSOCIATION, INC.

Document Number: N29897

Pursuant to the provisions of Section 617.1006, Florida Statutes, this **Florida Not-For-Profit Corporation** adopts the following amendment(s) to its Articles of Incorporation (otherwise, all other provisions shall remain the same):

Amendment Adopted:

Language to be added is underlined. Language to be deleted is ~~struck through~~.

SEE ATTACHED AMENDED AND RESTATED ARTICLES OF INCORPORATION
FOR BRIARCREST HOMEOWNER'S ASSOCIATION, INC.

The date of Adoption of the Amendment(s) was: January 23, 2018

Adoption of Amendment(s) (check one):

☒ The amendment(s) was/were adopted by the members and the number of votes cast for the amendment was sufficient for approval.

☐ There are no members or members entitled to vote on the amendment(s). The amendment(s) was/were adopted by the Board of Directors.

Signed this 10 day of September, 2018.

Sign: Kerri Tonkin

- By the Chairman or Vice Chairman of the Board, President, or other Officer.
- If Directors have not been selected, then by an Incorporator.
- If in the hands of a Receiver, Trustee, or other Court appointed fiduciary, then that fiduciary.

Print: KERRI TONKIN

Title: Chairman

FILED
18 OCT -1 PM 5:11
TALLAHASSEE, FLORIDA

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
BRIARCREST HOMEOWNER'S ASSOCIATION, INC.**

These are the Amended and Restated Articles of Incorporation of Briarcrest Homeowner's Association, Inc. The original Articles of Incorporation were filed with the Florida Department of State on December 27, 1988, under Charter Number N29897.

For historical reference, the street address of the initial principal office and the initial mailing address was 12751 Cleveland Avenue #211, Fort Myers, Florida 33907. The names of the original incorporators were Jerry A. Ross, Dorothy A. Ross and Rodney A. Fidler, Jr. The street address of the initial registered office was 12751 Cleveland Avenue #211, Fort Myers, Florida 33907 and the name of the initial registered agent was Jerry Ross. The address of the current registered agent and registered office is Sherry Nassoiy, 11934 Fairway Lakes Drive #1, Fort Myers, Florida 33913. The Board of Directors may, from time to time, change the designation of the principal office, the mailing address of the corporation, the registered office and the registered agent, in the manner provided by law.

1. NAME. The name of the corporation continues to be Briarcrest Homeowner's Association, Inc. (the "Association").

2. DEFINITIONS. The definitions set forth in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Briarcrest, as amended from time to time (the "Declaration") and the Act shall apply to terms used in these Articles.

3. TERM OF EXISTENCE. The Association shall have perpetual existence; however, if the Association is dissolved, the property consisting of the Surface Water Management System shall be transferred to and maintained as set forth in Article 13.1 of these Articles.

4. PURPOSE. The Association is organized for the purpose of promoting the health, safety, welfare and recreational opportunities of the Owners of Lots now and hereafter included within that certain subdivision of real property located in Lee County, Florida, which is known as "BRIARCREST", primarily by means of the acquisition, construction, management, maintenance and care of real and personal property which is owned by either the Association or by Owners in common, made available for the common benefit of all Members of the Association and is of a nature that tends to enhance the beneficial enjoyment of the private residences of the Owners, or, which is owned privately by an Owner, to the extent that the condition of such property effects the overall appearance or structure of Lots included within the Community.

5. POWERS. In the furtherance of this purpose, the powers of the Association shall include and be governed by the following:

5.1 General. The Association shall have all of the common-law and statutory powers of a corporation not for profit under the laws of Florida that are not in conflict with the provisions of the Declaration, these Articles or the Bylaws or prohibited by law.

5.2 Enumeration. The Association shall have all the powers set forth in Chapters 617 and 720, Florida Statutes, as amended from time to time, except as limited by the Declaration, these Articles and the Bylaws (all as amended from time to time), and all of the powers reasonably necessary to operate the Community including but not limited to the following:

5.2.1 To fix and make assessments against each Lot in the Community and collect the assessment made against a Lot, together with the costs of collection, including a reasonable attorney's fee, and interest and late fees thereon from the date due at the maximum rate then allowable by law, from the Owner or Owners thereof by any lawful means, including the foreclosure of the lien which the Association has against the Lot for the payment of assessments;

5.2.2 To borrow money from such lenders and upon such terms as the Association may deem appropriate and to pledge the assets of the Association, including the right of the Association to make and collect assessments, as security for the repayment thereof, with the consent of at least two-third (2/3rds) of the entire Membership;

5.2.3 To use and expend the proceeds of assessments and borrowings to pay the debts and obligations of the Association and otherwise in a manner consistent with the purposes for which this Association is formed;

5.2.4 To review the plans and specifications of proposed improvements intended to be constructed on any Lot to determine whether they comply with the terms and provisions of the Governing Documents, and, if they comply, approve them, and if they do not comply, disapprove them;

5.2.5 To maintain, repair, replace, reconstruct, add to, and operate the Association property and other property acquired or leased by the Association for use by Owners together with the areas within the Community intended for the common use and benefit of the Owners, to the extent not maintained by others, including, but without limitation, the lakes, ditches, canals and other water retention and drainage systems, the streets, curbs, gutters, medians, entryways, common sewers and storm sewers and the other common utilities, including common telephone, cable television and electronic transmission cables;

5.2.6 To purchase and maintain one or more insurance policies insuring the Association's property against loss, damage or destruction, insuring the Association against liability to others, and protecting the Association, its Officers, Directors and Members;

5.2.7 To make, amend, impose and enforce by any lawful means, reasonable rules and regulations with respect to the use of the Lots, Common Areas and Association property;

5.2.8 To contract for the management of the Association and any facilities used by the Owners, and to delegate to the party with whom such contract has been entered into all of the powers and duties of the Association except those which require specific approval of the Board of Directors or the Membership of the Association;

5.2.9 To employ personnel to perform the services required for proper operation of the Association;

5.2.10 To do and perform anything required by these Articles, the Bylaws or the Declaration to be done by an Owner, but not done timely by the Owner, at the cost and expense of the Owner;

5.2.11 To do and perform any obligations imposed upon the Association by the Declaration and to enforce by any legal means the provisions of these Articles, the Bylaws and the Declaration;

5.2.12 To have and exercise any and all powers, rights and privileges which a corporation organized under Chapter 617, Florida Statutes, may not have or hereafter have or exercise;

5.2.13 To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

5.2.14 Dedicate, sell or transfer all or any part of the common area, including roadways, to any public agency, authority or utility. No such dedication or transfer shall be effective unless an instrument has been signed by a majority of the Board of Directors agreeing to such dedication or transfer;

5.2.15 Grant easements as to the Common Area to public and private utility companies including cable television, and to public bodies or governmental agencies or other entities or persons, with or without cost or discharge, at the sole discretion of the Board of Directors, where convenient, desirable or necessary in connection with the development of the Properties, and the providing of utility and other services thereto; and

5.2.16 From time to time to adopt, alter, amend and rescind reasonable rules and regulations governing the use of the Common Area, which rules and regulations shall be consistent with the rights and duties established by the Declaration and with the provisions of these Articles of Incorporation.

6. MEMBERS AND VOTING.

6.1. Membership. Every person or entity who is, from time to time, the record Owner of a Lot within the Briarcrest Community will be a Member of the Association, but only for so long as he is the record Owner of a Lot. However, any such person or entity who holds record title merely as security for the payment of any indebtedness or the performance of an obligation will not be a Member. Membership will be appurtenant to, and may be separated from, the ownership of a Lot.

6.2. Voting. On all matters upon which the Membership shall be entitled to vote, there shall be only one (1) vote for each Lot, which vote shall be exercised or cast in the manner provided by the Bylaws. Since there are a total of eighty (80) Lots, there are a total of eighty (80) votes. Any person or entity owning more than one (1) Lot shall be entitled to one (1) vote for each Lot owned. Those Members whose voting rights are suspended pursuant to the terms of the Governing Documents and/or Florida law shall not be entitled to cast the vote assigned to the Lot for which the suspension was levied during the period of suspension and such Voting Interests shall be subtracted from the required number of votes when calculating any required vote or quorum for the period during which such suspension exists.

6.3. Action without Meetings. Any action which could be taken by Owners at a Membership meeting may be taken without necessity of a meeting if approved in writing by Owners having the right to cast sufficient votes to approve the action if taken at a meeting.

7. OFFICERS. The affairs of the Association shall be administered by the Officers designated in the Bylaws. The Officers shall be elected by the Board of Directors of the Association at its first meeting following the annual meeting of the Members of the Association and shall serve at the pleasure of the Board of Directors. The Bylaws may provide for the removal from office of Officers, for filling vacancies and for the duties of the Officers.

8. DIRECTORS.

8.1 Number and Qualification. The property, business and affairs of the Association shall be managed by a board consisting of the number of Directors determined by the Bylaws, but which shall consist of not less than five (5) Directors.

8.2 Duties and Powers. All of the duties and powers of the Association existing under Chapters 617 and 720, Florida Statutes, the Declaration, these Articles, the Bylaws and the Rules and Regulations (all as amended from time to time) shall be exercised exclusively by the Board of Directors, subject only to approval by Members when such approval is specifically required.

8.3 Election; Removal. Directors of the Association shall be elected at the annual meeting of the Members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

9. BYLAWS. The Bylaws of this Association may be altered, amended or repealed in the manner provided in the Bylaws.

10. AMENDMENTS. These Articles may be amended in the following manner:

10.1 Proposal of Amendments. An amendment may be proposed by the President of the Association, a majority of the Directors, or by twenty-five percent (25%) of the entire Voting Interest.

10.2 Adoption of Amendments. A resolution for the adoption of a proposed amendment may be adopted by a vote of two-thirds (2/3rds) of the Membership or Voting Interests of the Association present (in person or by proxy) and voting at a duly noticed meeting at which a quorum is present, or by the written agreement of two-thirds (2/3rds) of the entire Voting Interests. Amendments correcting errors, omissions or scrivener's errors may be executed by the Officers of the Association, upon Board approval, without need for Association Membership vote.

10.3 Effective Date. An amendment when adopted shall become effective after being recorded in the Lee County Public Records according to law and filed with the Secretary of State according to law.

11. INDEMNIFICATION.

11.1 Indemnity. The Association shall indemnify any Officer, Director, or Committee Member 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, by reason of the fact that he is or was a Director, Officer or Committee Member of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding unless (i) a court of competent jurisdiction finally determines, after all appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or 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, that he had reasonable cause to believe his conduct was unlawful, and (ii) such court also determines specifically that indemnification should be denied. 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, of itself, create a presumption that the person failed to 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, had reasonable cause to believe that his conduct was unlawful. It is the intent of the Membership of the Association, by the adoption of this provision, to provide the most comprehensive indemnification possible to their Officers, Directors or Committee Members as permitted by Florida law. In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association.

11.2 Defense. To the extent that a Director, Officer or Committee Member of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in this Article 11, 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.

11.3 Advances. Reasonable expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the affected Director, Officer or Committee Member to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Association as authorized by this Article 11.

11.4 Miscellaneous. The indemnification provided by this Article 11 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any Bylaw, agreement, vote of Members or otherwise, and shall continue as to a person who has ceased to be a Director, Officer or Committee Member and shall inure to the benefit of the heirs and personal representative of such person.

11.5 Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, Committee Member, employee or agent of the Association, or 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, or arising out of his status as such, whether or not the Association would have the duty to indemnify him against such liability under the provisions of this Article.

12. TRANSACTION IN WHICH DIRECTORS OR OFFICERS ARE INTERESTED. No contract or transaction between the Association and one or more of its Directors or Officers, or between the Association and any other corporation, partnership, association or other organization in which one or more of its Directors or Officers are directors or officers, or have a financial interest, shall be invalid, void or voidable solely for this reason, or solely because the Director or Officer is present at or participated in the meeting of the Board or Committee thereof which authorized the contract or transaction, or solely because his or their votes are counted for such purpose. No Director or Officer of the Association shall incur liability by reason of the fact that he is or may be interested in any such contract or transaction. Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a Committee which authorized the contract transaction.

13. DISSOLUTION OF ASSOCIATION. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, Committee Member, employee or agent of the Association, or 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, or arising out of his status as such, whether or not the Association would have the duty to indemnify him against such liability under the provisions of this Article.

13.1 Surface Water Management System. Property and interests in property, whether real, personal or mixed, which constitutes or is directly or indirectly related to the Surface Water Management System, if any, will be dedicated to the appropriate governmental

agency or contributed to a similar non-profit corporation or organization as required by the South Florida Water Management District, if any. This provision may not be amended without the consent and approval of the South Florida Water Management District.

14. DECLARATION OF INTENTION. It is intended that the Association be eligible for treatment as a tax-exempt organization described in Section 528 of the Internal Revenue Code of 1954, as amended, or in the corresponding provisions of any subsequent legislation.