

NP9000007363

Requester's Name

JoAnne Chard

2069 First Street, Suite 301

Fort Myers, Florida 33901

99 DEC 10 PM 12:48  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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**NEW FILINGS**

- ☐ Profit  
☐ Not for Profit  
☐ Limited Liability  
☐ Domestication  
☐ Other

**OTHER FILINGS**

- ☐ Annual Report  
☐ Fictitious Name

**AMENDMENTS**

- ☐ Amendment  
☐ Resignation of R.A., Officer/Director  
☐ Change of Registered Agent  
☐ Dissolution/Withdrawal  
☐ Merger

**REGISTRATION/QUALIFICATION**

- ☐ Foreign  
☐ Limited Partnership  
☐ Reinstatement  
☐ Trademark  
☐ Other

**S. Thompson DEC 14 1999**

**Examiner's Initials**

ARTICLES OF INCORPORATION OF  
CREEKSIDE COVE HOMEOWNERS  
ASSOCIATION, INC.  
(A Florida Corporation Not-For-Profit)

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Preamble

Up the Creek, Inc. owns certain property in Lee County, Florida, which property is subject to a Declaration of Covenants and Restrictions, of which these Articles form a part. This Association is being formed to administer the Declaration and to perform, among other things, the duties and exercise the powers pursuant to the Declaration. All of the definitions contained in the Declaration and the Bylaws shall apply to these Articles.

ARTICLE I

Name and Principal Office

The name of the corporation is: CREEKSIDE COVE HOMEOWNERS' ASSOCIATION, INC., a Florida non-profit corporation (hereinafter referred to as the "Association"); and the street address of the initial principal office of the association is 2069 First Street, Suite 301, Ft. Myers, Florida 33901.

ARTICLE II

Purpose

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

1. To operate as a corporation not-for-profit pursuant to Chapter 617 of the Florida Statutes.
2. To administer, enforce and carry out the terms and provisions of the Declaration, as the same may be amended from time to time.
3. To promote the health, safety, welfare, comfort, and social and economic welfare of the Association members and residents of the Subject Property, as authorized by the Declaration, by these Articles, and by the Bylaws.
4. To maintain and manage the Surface Water Management System, as defined in the Declaration.

### ARTICLE III

#### Powers

The Association shall have the following powers:

1. All of the common law and statutory powers of a corporation not-for-profit under the laws of Florida which are not in conflict with the terms of these Articles.
2. To enter into, make, establish and enforce, rules, regulations, bylaws, covenants, restrictions and agreements to carry out the purposes of the Association.
3. To make and collect Assessments against members of the Association to defray the costs, expenses, reserves and losses incurred or to be incurred by the Association; and to use the proceeds thereof in the exercise of the Association's powers and duties.
4. To own, purchase, sell, mortgage, lease, administer, manage, operate, maintain, improve, repair and/or replace real and personal property.
5. To hold funds for the exclusive benefit of the members of the Association as set forth in these Articles and as provided in the Declaration and the Bylaws.
6. To purchase insurance for the protection of the Association, its officers, directors and members, and such other parties as the Association may determine to be in the best interests of the Association.
7. To operate, maintain, repair, and improve all common areas, and such other portions of the Subject Property as may be determined by the Board from time to time.
8. To exercise architectural control over all buildings, structures and improvements to be placed or constructed upon any portion of the Subject Property pursuant to the Declaration.
9. To provide for private security services within the Subject Property as the Board in its discretion determines as necessary or appropriate.
10. To provide, purchase, acquire, replace, improve, maintain and/or repair such buildings, structures, street lights and other structures, landscaping, paving and equipment, both real and personal, related to the health, safety and social

welfare of the members of the Association and the owners and residents of the Subject Property as the Board in its discretion determines necessary or appropriate.

11. To employ personnel necessary to perform the obligations, services and duties required of or to be performed by the Association and/or to contract with others for the performance of such obligations, services and/or duties.
12. To charge a membership or use or fee for any recreational facilities owned or operated by the Association.
13. To sue and be sued.
14. To operate and maintain the Surface Water Management System as permitted by the South Florida Water Management District, including, but not limited to, all lakes, retention areas, culverts and related appurtenances.
15. All other powers necessary to effectuate the purposes for which the Association is organized.

#### ARTICLE IV

##### Members

##### 1. Members.

1.01 Owner. The owner of any lot shall be a member of the Association. Such memberships shall be initially established upon the recording of these Articles and the Declaration among the Public Records of the county in which the Subject Property is located.

##### 1.02. Governmental Authorities and Utilities.

Notwithstanding the foregoing, no governmental authority or utility company shall be deemed a member unless one or more lots actually exist upon the Subject Property owned by such governmental authority or utility company, in which event the governmental authority or utility company will be a member only with respect to the lot owned.

##### 2. Transfer of Membership.

Transfer of membership in the Association shall be established by the recording in the Public Records of the county in which the Subject Property is located, of a deed or other instrument establishing a transfer of record title to any lot for which membership has already been established as hereinabove provided, and a Consent to Transfer form as set forth in the Declaration, the owner(s) designated by such instrument of conveyance

and Consent to Transfer thereby becoming a member, and the prior owner's membership thereby being terminated. In the event of death of a member, his membership shall be automatically transferred to his heirs or successors in interest, subject to the reasonable approval of the Association. Notwithstanding the foregoing, the Association shall not be obligated to recognize such a transfer of membership until such time as the Association receives a true copy of the deed or other instrument establishing the transfer of ownership of the lot and executes a Consent to Transfer, and it shall be the responsibility and obligation of the former and new member to provide such true copy of said instrument to the Association.

3. Assignment. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the lot associated with the membership of the member, nor may a membership be separately assigned, hypothecated or transferred in any manner except as an appurtenance to such lot.

4. Members Voting Rights. The total number of members' votes shall be equal to the total number of lots within the Subject Property from time to time. On all matters upon which the membership shall be entitled to vote, there shall be one (1) vote for each lot. Each member shall have the number of votes equal to the number of lots within the Subject Property owned by the member at the time of such vote.

5. Members Meetings. The Bylaws shall provide for an annual meeting of the members of the Association and may make provision for special meetings of the members.

## ARTICLE V

### Directors

1. The affairs of the Association shall be managed by a Board consisting of not less than three (3) directors.

2. The directors of the Association shall be elected by the members in accordance with the Bylaws, except that Declarant shall have the right to appoint directors of the Association as follows:

2.01 Declarant shall have the right to appoint a majority of the directors until three (3) months after ninety percent (90%) of the lots that will be ultimately located within the Subject Property have been conveyed to purchasers other than the Declarant.

2.02 Thereafter, members other than Declarant shall have the right to elect a majority of the directors, and Declarant should have the right to appoint at least one (1) Director so long as Declarant holds for sale in the ordinary course of business at least five percent (5%) of all lots in all phases of the community.

2.03 Thereafter, Declarant shall no longer have the right to appoint any directors.

3. All of the duties and powers of the Association existing under Chapter 617 of the Florida Statutes, 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.

4. Directors may be removed and vacancies on the Board shall be filed in the manner provided by the Bylaws, however, any director appointed by the Declarant may only be removed by the Declarant, and any vacancy on the Board shall be appointed by the Declarant if, at the time such vacancy is to be filled, the number of remaining directors appointed by the Declarant is less than the maximum number of Directors which may, at that time, be appointed by the Declarant as set forth above.

## ARTICLE VI

### 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 VII

### Indemnification

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, by reason of the fact that he is or was a director, employee, officer or agent 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 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 duty to the Association unless and only to the extent that the court in which such 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 such 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.

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.

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 director, 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 in this Article.

4. The indemnification provided by this Article 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.

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 VIII

### Bylaws

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

## ARTICLE IX

### Amendments

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

1. A majority of the Board shall adopt, on its own accord or on the request of not less than ten percent (10%) of the total voting interest, 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,
2. Written notice setting forth the proposed amendment or a summary of the changes to be affected 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 meeting of -members. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting. 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 two-thirds (2/3rds) of the votes of the entire membership of the Association.
4. Any number of amendments may be submitted to the members and voted upon by them at any one meeting.
5. If all of the Directors and all of the members eligible to vote sign a written statement manifesting their intention that an amendment to these Articles be adopted, then the amendment shall thereby be adopted as though the above requirements have been satisfied.
6. In addition to the above, so long as Declarant controls the Association, Declarant shall be entitled to unilaterally amend these Articles and the Bylaws, and no amendment to the Articles or the Bylaws shall be effective without the written consent of Declarant. Furthermore, 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 joins in the execution of the amendment.
7. Upon the approval of an amendment to these Articles, 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 X

### Term

The Association shall have perpetual existence, unless sooner terminated as set forth in the Declaration.

## ARTICLE XI

### Incorporator

The name and street address of the Incorporator is:

JoAnne Chard

2069 First Street, Suite 301

Fort Myers, Florida 33901

## ARTICLE XII

### Initial Registered Office Address and Name of Initial Registered Agent

The street address of the initial registered office of the Association is 2069 First Street, Suite 301, Ft. Myers, Florida 33901. The initial registered agent of the Association at that address is JoAnne Chard.

## ARTICLE XIII

### Dissolution

The Association may be dissolved as provided by law, provided that any such dissolution shall require the consent of at least two-thirds (2/3rds) of the members. In the event of dissolution or final liquidation of the Association, the assets, both real and personal of the Association, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable to the same as those to which they were required to be devoted by the Association. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization, to be devoted to purposes as nearly as practicable to the same as those to which they were required to be devoted by the Association. No such disposition of Association properties shall be effective to divest or diminish any right or title of any member vested under the Declaration, unless made in accordance with the provisions of such Declaration.

IN WITNESS WHEREOF, the undersigned, Incorporator, has executed these  
Articles this 8th day of Dec, 99.

WITNESSES:

Betty Bourley  
Signature

Betty Bourley  
Print Name

[Signature]  
Signature

Dawn Baker  
(Print Name)

Dawn Chandel

STATE OF FLORIDA  
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 8th day of  
December, A.D., 1999, by JoAnne Chard  
He/She is personally known to me or has produced \_\_\_\_\_ as  
identification.

NOTARY SEAL



[Signature]  
Notary Public Signature

Dawn Baker  
Print Name

I hereby acknowledge and accept the assignment of registered agent for this  
corporation.

[Signature]  
Registered Agent's Signature

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