

P21000087372

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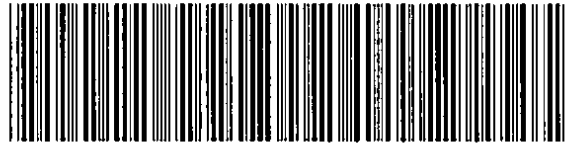
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INC AMEND

1. PALMETTO MANAGER, INC

(CORPORATE NAME AND DOCUMENT #)

2.
(CORPORATE NAME AND DOCUMENT #)

3.
(CORPORATE NAME AND DOCUMENT #)

4.
(CORPORATE NAME AND DOCUMENT #)

5.
(CORPORATE NAME AND DOCUMENT #)

6.
(CORPORATE NAME AND DOCUMENT #)

**SPECIAL
INSTRUCTIONS:**

COVER LETTER

TO: Amendment Section
Division of Corporations

NAME OF CORPORATION: Palmetto Manager, Inc.

DOCUMENT NUMBER: P21000087372

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

Please return all correspondence concerning this matter to the following:

Kevin A. Denti, Esquire

Name of Contact Person

Kevin A. Denti, P.A.

Firm/ Company

2180 Immokalee Road - Suite #316

Address

Naples, Florida 34110

City/ State and Zip Code

kdenti@dentilaw.com

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

For further information concerning this matter, please call:

Kevin A. Denti, Esquire

at (239) 260-8111

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:

☒ \$35 Filing Fee

☐ \$43.75 Filing Fee &
Certificate of Status

☐ \$43.75 Filing Fee &
Certified Copy
(Additional copy is
enclosed)

☐ \$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
The Centre of Tallahassee
2415 N. Monroe Street, Suite 810
Tallahassee, FL 32303

Articles of Amendment
to
Articles of Incorporation
of

Palmetto Manager, Inc.

(Name of Corporation as currently filed with the Florida Dept. of State)

P21000087372

(Document Number of Corporation (if known))

Pursuant to the provisions of section 607.1006, Florida Statutes, this *Florida Profit Corporation* adopts the following amendment(s) to its Articles of Incorporation:

A. If amending name, enter the new name of the corporation:

The new name must be distinguishable and contain the word "corporation," "company," or "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.," or the designation "Corp.," "Inc.," or "Co.". A professional corporation name must contain the word "chartered," "professional association," or the abbreviation "P.A."

B. Enter new principal office address, if applicable:

(Principal office address MUST BE A STREET ADDRESS)

C. Enter new mailing address, if applicable:

(Mailing address MAY BE A POST OFFICE BOX)

D. If amending the registered agent and/or registered office address in Florida, enter the name of the new registered agent and/or the new registered office address:

Name of New Registered Agent

(Florida street address)

New Registered Office Address:

(City)

, Florida

(Zip Code)

New Registered Agent's Signature, if changing Registered Agent:

I hereby accept the appointment as registered agent. I am familiar with and accept the obligations of the position.

Signature of New Registered Agent, if changing

Check if applicable

☐ The amendment(s) is/are being filed pursuant to s. 607.0120 (1)(e), F.S.

If amending the Officers and/or Directors, enter the title and name of each officer/director being removed and title, name, and address of each Officer and/or Director being added:

(Attach additional sheets, if necessary)

Please note the officer/director title by the first letter of the office title:

P = President; V= Vice President; T= Treasurer; S= Secretary; D= Director; TR= Trustee; C = Chairman or Clerk; CEO = Chief Executive Officer; CFO = Chief Financial Officer. If an officer/director holds more than one title, list the first letter of each office held. President, Treasurer, Director would be PTD.

Changes should be noted in the following manner. Currently John Doe is listed as the PST and Mike Jones is listed as the V. There is a change, Mike Jones leaves the corporation, Sally Smith is named the V and S. These should be noted as John Doe, PT as a Change, Mike Jones, V as Remove, and Sally Smith, SV as an Add.

Example:

<input checked="" type="checkbox"/> Change	<u>PT</u>	<u>John Doe</u>
<input type="checkbox"/> Remove	<u>V</u>	<u>Mike Jones</u>
<input type="checkbox"/> Add	<u>SV</u>	<u>Sally Smith</u>

Type of Action (Check One)	Title	Name	Address
1) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____
2) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____
3) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____
4) <input type="checkbox"/> Change	_____	_____	_____
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5) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____
6) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____

E. If amending or adding additional Articles, enter change(s) here:

(Attach additional sheets, if necessary). (Be specific)

See attached sheet

F. If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself:

(if not applicable, indicate N/A)

ADDITIONAL SHEET

1. The following provisions shall be added to the end of Article III:

Notwithstanding the foregoing, the Corporation shall be considered a Special Purpose Bankruptcy Remote Entity. For purposes hereof, a "Special Purpose Bankruptcy Remote Entity" means a Corporation which at all times since its formation and at all times thereafter:

- (a) was, is and will be organized solely for the purpose of acting as a member of the limited liability company that owns **PALMETTO RESIDENCES LLC**, a Florida limited liability company ("Borrower") and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;
- (b) has not been, is not, and will not be engaged, in any business unrelated to acting as a member of Borrower;
- (c) has not had, does not have, and will not have, any assets other than its membership interest in Borrower;
- (d) has not engaged in, sought or consented to, and will not engage in, seek or consent to, any dissolution, winding up, liquidation, division, consolidation, merger, sale of all or substantially all of its assets (unless such sale will result in the repayment in full of the Loan), transfer of partnership or membership interests (if such entity is a general partner in a limited partnership or a member in a limited liability company) or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable) with respect to the matters set forth in this definition;
- (e) has had, now has and will have at least one (1) Independent Director, and has not caused or allowed, and will not cause or allow, the Board of Directors of such entity to take any Bankruptcy Action or any other Material Action or any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its Board of Directors unless the one (1) Independent Director shall have participated in such vote and shall have voted in favor of such action;
- (f) has been, is and intends to remain solvent and has paid and shall pay its debts and liabilities from its then available assets (including a fairly allocated portion of any personnel and overhead expenses that it shares with any Affiliate) from its assets as the same shall become due, and has maintained and shall maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations (provided, however, the foregoing shall not require any shareholder, partner, or member of such entity, as applicable, to make additional capital contributions to such entity);

- (g) has not failed, and will not fail, to correct any known misunderstanding regarding the separate identity of such entity and has not and shall not identify itself as a division of any other Person;
- (h) has maintained and will maintain its accounts, books and records separate from any other Person and has filed and will file its own tax returns, except to the extent that it has been or is required to file consolidated tax returns by law or is treated as a disregarded entity and is not required to file a particular tax return;
- (i) has maintained and will maintain its own records, books, resolutions and agreements;
- (j) has not commingled, and will not commingle, its funds or assets with those of any other Person and has not participated and will not participate in any cash management system with any other Person;
- (k) has held and will hold its assets in its own name;
- (l) has conducted and shall conduct its business in its name or in a name franchised or licensed to it by an entity other than an Affiliate of itself or of Borrower, except for business conducted on behalf of itself by another Person under a business management services agreement that is on commercially reasonable terms, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of Borrower;
- (m) has maintained and will maintain its books, bank accounts, balance sheets, financial statements, accounting records and other entity documents separate from any other Person and has not permitted, and will not permit, its assets to be listed as assets on the financial statement of any other entity except as required by GAAP; provided, however, that appropriate notation shall be made on any such consolidated statements to indicate its separateness from such Affiliate and to indicate that its assets and credit are not available to satisfy the debt and other obligations of such Affiliate or any other Person and such assets shall be listed on its own separate balance sheet;
- (n) has paid and will pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations (provided, however, the foregoing shall not require any shareholder, partner or member of such entity, as applicable, to make additional capital contributions to such entity);
- (o) has observed and will observe all corporate formalities;
- (p) has had no and will have no Indebtedness (including loans, whether or not such loans are evidenced by a written agreement) other than unsecured operational debt incurred in the ordinary course of business relating to the ownership and operation of Borrower in amounts not to exceed \$25,000, in the aggregate, which liabilities

are not more than sixty (60) days past the date incurred, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances;

- (q) has not assumed or guaranteed or become obligated for, and will not assume or guarantee or become obligated for, the debts of any other Person and has not held out and will not hold out its credit as being available to satisfy the obligations of any other Person except as permitted or required pursuant to this Agreement;
- (r) has not acquired and will not acquire obligations or securities of its partners, members or shareholders or any other Affiliate;
- (s) has allocated and will allocate, fairly and reasonably, any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;
- (t) has maintained and used, now maintains and uses, and will maintain and use, separate stationery, invoices and checks bearing its name, which stationery, invoices and checks utilized by the Corporation or utilized to collect its funds or pay its expenses have borne, and shall bear its own name and have not borne and shall not bear the name of any other entity unless such entity is clearly designated as being the Corporation's agent;
- (u) has not pledged and will not pledge its assets for the benefit of any other Person;
- (v) has held itself out and identified itself, and will hold itself out and identify itself, as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of Borrower and not as a division or part of any other Person, except for services rendered under a business management services agreement with an Affiliate that complies with the terms contained in subparagraph (w) of this definition, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of Borrower;
- (w) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;
- (x) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);
- (y) has not identified and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, and has not identified itself, and shall not identify itself, as a division of any other Person;

- (z) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except (i) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are substantially similar to those that would be obtained in a comparable arm's-length transaction with an unrelated third party, and (ii) in connection with this Agreement;
- (aa) other than capital contributions and distributions permitted under the terms of its organizational documents and the Loan Documents, has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except (i) in the ordinary course of its business and on terms which are intrinsically fair and are substantially similar to those that would be obtained in a comparable arm's-length transaction with an unrelated third party, and (ii) in connection with this Agreement;
- (bb) has not had and shall not have any obligation to, and has not indemnified and shall not indemnify its partners, officers, directors or members, as the case may be, in each case unless such an obligation or indemnification is fully subordinated to the Indebtedness and shall not constitute a claim against it in the event that its cash flow is insufficient to pay the Indebtedness;
- (cc) shall consider the interests of its creditors in connection with all corporate actions;
- (dd) does not and will not have any of its obligations guaranteed by any Affiliate;
- (ee) has conducted and shall conduct its business so that each of the assumptions made about it and each of the facts stated about it in any insolvency opinion issued in conjunction with the Loan are true;
- (ff) has complied and will comply with all of the terms and provisions contained in its organizational documents and cause statements of facts contained in its organizational documents to be and to remain true and correct; and
- (gg) has not permitted and shall not permit any Affiliate or constituent party independent access to its bank accounts except as permitted under the Loan Documents.

2. The following provisions shall be added as new Article IX:

- (i) Lender is an intended third-party beneficiary of these Articles of Incorporation and specifically the "special purpose" provisions contained herein; and
- (ii) Until the Indebtedness is paid in full, these Articles of Incorporation shall not be amended without the prior written consent of Lender.

3. The following provisions shall be added as new Article X:

- (i) The Corporation will at all times have at least one (1) Independent Director. The Independent Director may not be removed or replaced without Cause and unless such entity provides Lender with not less than three (3) business days' prior written notice of: (a) any proposed removal of the Independent Director, together with a statement as to the reasons for such removal; and (b) the identity of the proposed replacement Independent Director, together with a certification that such replacement satisfies the requirements set forth in these Articles of Incorporation.
- (ii) All right, power, and authority of the Independent Director shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in Article III, Subsection (e) above, and the Independent Director shall otherwise have no authority to bind the Corporation. The Independent Director will not be personally liable to the Corporation, its shareholders, or any other person for monetary damages to the fullest extent provided by Florida law. If Florida law is amended after the date of the filing hereof to authorize corporate action further eliminating or limiting the personal liability of the Independent Director, then the liability of the Independent Director of the Corporation will be eliminated or limited to the fullest extent permitted by such Florida law, as so amended. No repeal or modification of this By-Law will apply to or have any effect on the liability or alleged liability of the Independent Director of the Corporation for or with respect to any acts or omissions of such Independent Director occurring prior to such repeal or modification. The Corporation shall indemnify any officer, director (including the Independent Director), and any former officer or director (including the Independent Director) to the fullest extent permitted by Florida law.

4. The following provisions shall be added as new Article XI:

Capitalized terms not otherwise defined in these Articles of Incorporation shall have the following meanings:

- (i) "Bankruptcy Action" shall mean: (a) filing a voluntary petition under any federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against the Corporation under any federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against the Corporation; (c) filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against the Corporation by any other Person under any federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) consenting to or acquiescing in or joining in an application for the appointment in a judicial, quasi-judicial, or administrative proceeding of a custodian, receiver, trustee, assignee, sequestrator (or similar official), liquidator, or examiner; (e) the filing of a petition seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under applicable law; (f) an action taken by any court of competent jurisdiction that allows such court to assume custody or control of the Corporation or of the whole or any

substantial part of the Corporation's property or assets; or (g) making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, the Corporation's insolvency or inability to pay its debts as they become due.

- (ii) "Cause" shall mean, with respect to the Independent Director: (i) acts or omissions by such Independent Director that constitute willful disregard of, or gross negligence with respect to, such Independent Director's duties; (ii) such Independent Director has engaged in, has been charged with, or has been indicted or convicted for any crime or crimes of fraud or other acts constituting a crime under any law applicable to such Independent Director; (iii) such Independent Director has breached its fiduciary duties of loyalty and care as and to the extent of such duties in accordance with the terms of the Corporation's organizational documents; (iv) there is a material increase in the fees charged by such Independent Director or a material change to such Independent Director's terms of service; (v) such Independent Director is unable to perform his or her duties as Independent Director due to death, disability, or incapacity; or (vi) such Person no longer meets the criteria provided in the definition of Independent Director.
- (iii) "Indebtedness" shall mean the outstanding principal balance, together with all interest accrued and unpaid thereon and all other sums (including any yield maintenance premium and breakage costs) due to Lender in respect of the Loan.
- (iv) "Independent Director" shall mean a natural person selected by the Corporation:
 - (a) with prior experience as an independent director, independent manager, or independent member; (b) with at least three (3) years of employment experience; (c) who is provided by a Nationally Recognized Service Company (defined below); and (d) who is duly appointed as an Independent Director and is not, will not be while serving as Independent Director, and shall not have been at any time during the preceding five (5) years, any of the following:
 - (a) a member, partner, equityholder, manager, director, officer or employee of the Corporation or any of its equityholders or Affiliates (other than as an Independent Director of the Corporation or an Affiliate of the Corporation that is not in the direct chain of ownership of the Corporation and that is required by a creditor to be a single purpose bankruptcy remote entity, provided that such Independent Director is employed by a company that routinely provides professional independent directors or managers in the ordinary course of its business);
 - (b) a creditor, supplier or service provider (including provider of professional services) to the Corporation or any of its equityholders or Affiliates (other than a nationally recognized company that routinely provides professional independent directors and other corporate services to the Corporation or any of its Affiliates in the ordinary course of its business);
 - (c) a family member of any such member, partner, equityholder, manager, director, officer, employee, creditor, supplier or service provider;

- (d) a member, partner or employee of a law firm that has provided legal services of any kind to the Corporation or any of its Affiliates; or
- (c) a Person that controls (whether directly, indirectly or otherwise) any Person described in clauses (a), (b), (c) or (d) above.

A natural person who otherwise satisfies the foregoing definition and satisfies subparagraph (a) by reason of being the Independent Director of a "special purpose entity" affiliated with the Corporation shall be qualified to serve as the Independent Director of the Corporation, provided that the fees that such individual earns from serving as the Independent Director of Affiliates of the Corporation in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year.

A natural person who satisfies the foregoing definition other than clause (b) shall not be disqualified from serving as the Independent Director of the Corporation if such individual is an independent director, independent manager, or special manager provided by a Nationally Recognized Service Company that provides professional independent directors, independent managers, and special managers and also provides other corporate services in the ordinary course of its business.

- (v) "Lender" shall mean **BRIGHTSPIRE CREDIT 1, LLC**, a Delaware limited liability company, together with its affiliates, successors and assigns.
- (vi) "Loan" shall mean that certain loan from Lender to Borrower in the maximum principal amount of \$28,381,000.00.
- (vii) "Material Action" shall mean to consolidate, divide, or merge the Corporation with or into any Person, or to sell all or substantially all of the assets of the Corporation (unless such sale results in the repayment, in full, of the Loan), or to institute a Bankruptcy Action or take action in furtherance of any such action, or, to the fullest extent permitted by law, to dissolve or liquidate the Corporation.
- (viii) "Nationally Recognized Service Company" shall mean any of CIT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, or such other nationally recognized company that provides independent director, independent manager, or independent member services and that is satisfactory to Lender in its reasonable discretion, in each case that is not an Affiliate of the Corporation and that provides professional independent directors and other corporate services in the ordinary course of its business.
- (ix) "Person" shall mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any Governmental Authority, and any fiduciary acting in such capacity on behalf of any of the foregoing.

The date of each amendment(s) adoption: _____, if other than the date this document was signed.

Effective date if applicable: _____
(no more than 90 days after amendment file date)

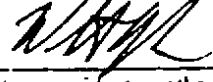
Note: If the date inserted in this block does not meet the applicable statutory filing requirements, this date will not be listed as the document's effective date on the Department of State's records.

Adoption of Amendment(s) (CHECK ONE)

- ☒ The amendment(s) was/were adopted by the incorporators, or board of directors without shareholder action and shareholder action was not required.
- ☐ The amendment(s) was/were adopted by the shareholders. The number of votes cast for the amendment(s) by the shareholders was/were sufficient for approval.
- ☐ The amendment(s) was/were approved by the shareholders through voting groups. The following statement must be separately provided for each voting group entitled to vote separately on the amendment(s).

"The number of votes cast for the amendment(s) was/were sufficient for approval
by _____"
(voting group)

Dated December 15, 2021 _____

Signature X  _____
(By a director, president or other officer – if directors or officers have not been selected, by an incorporator – if in the hands of a receiver, trustee, or other court appointed fiduciary by that fiduciary)

Walter S. Hagenbuckle

(Typed or printed name of person signing)

President

(Title of person signing)