

P99000099666

Florida Department of State
Division of Corporations
Public Access System
Katherine Harris, Secretary of State

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H00000062774 5)))

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To: Division of Corporations
Fax Number : (850) 922-4000

From: Account Name : BROAD AND CASSEL (ORLANDO)
Account Number : I19980000090
Phone : (407) 839-4200
Fax Number : (407) 425-8377

00 DEC - 1 PM 2:25
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

FILED

RECEIVED

00 DEC - 1 PM 12:06

DIVISION OF CORPORATIONS

BASIC AMENDMENT

BRISBEN PALM BAY, INC.

Certificate of Status	1
Certified Copy	1
Page Count	04
Estimated Charge	\$52.50

Amended & Restated

Electronic Filing Menu

Corporate Filing

Public Access Help

Articles

DEC-01-2000 FRI 11:31 AM

FAX NO.

P. 02

NOV, 30, 2000 5:22PM

BRISBEN COMPANIES

NO. 244 P. 4/7

Florida Dept. of State Electronic Filing

Facsimile Audit No. H000000627745

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
BRISBEN PALM BAY, INC.

FILED
00 DEC -1 PM 2:25
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

FIRST: The name of the Corporation is Brisben Palm Bay, Inc.

SECOND: The Corporation's principal place of business and mailing address is 7800 East Kemper Road, Cincinnati, Ohio 45249.

THIRD: The sole purpose of this Corporation is to serve as general partner (the "General Partner") of The Park at Palm Bay Limited Partnership (the "Partnership").

The Corporation shall have the authority to buy or otherwise acquire, own, develop, hold, manage, control, lease, sell, operate, improve and otherwise deal with property of all kinds in connection with the Partnership and the Partnership's acquisition, development, construction, ownership, maintenance and operation of a multifamily apartment complex intended for rental to persons of low and moderate income, to be known as The Park at Palm Bay, and to be located in Palm Bay, Florida (the "Project") and shall have the authority to exercise any and all other powers authorized under any laws that may be now or hereafter applicable to the Corporation, so long as such acts and activities are necessary, incidental or conducive to the attainment to its role or purpose as General Partner.

FOURTH: The number of shares which the Corporation is authorized to have outstanding is 10,000, all of which shall be designated common shares without par value.

FIFTH: The Corporation's initial registered agent and registered office in the State of Florida shall be:

CT Corporation System
1200 S. Pine Island Road
Plantation, Florida 33324

SIXTH: When authorized by the affirmative vote of the Board of Directors, without the action or approval of the shareholders of the Corporation, the Corporation may purchase, or contract to purchase, at any time and from time to time, shares of any class issued by the Corporation, voting trust certificates for shares, bonds, debentures, notes, scrip, warrants, obligations, evidences of indebtedness or any other securities of the Corporation, for such prices and upon and subject to such terms and conditions as the Board of Directors may determine, provided that no such purchase shall be made, pursuant to any such contract or otherwise, if after such purchase the assets of the Corporation would be less than its liabilities plus stated capital or

Attorney Name: Randal Alligood, P.A.
Broad and Cassel - Attorneys at Law
390 North Orange Avenue, Suite 1100
Orlando, Florida 32801
Telephone (407) 839-4200
Florida Bar No.: 459445

Florida Dept. of State Electronic Filing

Facsimile Audit No. H000000627745

if it is insolvent as defined in the Florida statutes or if there is reasonable ground to believe that by such purchase it would be rendered insolvent.

SEVENTH: No holder of shares of any class of the Corporation shall, as such holder, have any pre-emptive rights to subscribe for or purchase shares of any class now or hereafter authorized, or to purchase or subscribe for securities convertible into or exchangeable for shares of the Corporation or to which shall be attached or appertain any warrants or rights entitling the holder thereof to subscribe for or purchase shares.

EIGHTH: The Corporation shall have at all times at least one Independent Director. The term "Independent Director" shall mean any person who (i) is not and for the prior five years has not been (a) a shareholder, officer, director, partner, employee, significant customer, creditor, supplier or independent contractor of the Corporation, its ultimate parent or any subsidiary or affiliate, or (b) a member of the immediate family of any of the foregoing, and (ii) does not directly or indirectly own any class of voting stock of the Corporation or any of its affiliates. The term "affiliate" shall mean any person controlling, under common control with, or controlled by the person in question. The term "control" shall mean the possession, directly or indirectly, of the power to direct or to cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract or otherwise. If an Independent Director resigns, dies or becomes incapacitated, or such position is otherwise vacant, the Corporation shall not take any action requiring the unanimous affirmative vote of the Corporation's board of directors until a successor Independent Director is elected and qualified and approves such action.

NINTH: Unless approved by all of the members of the Corporation's board of directors:

(a) The Corporation shall not engage in any business activity other than in connection with or relating to the activities permitted in Article Third hereof.

(b) The Corporation shall not consolidate or merge with or into any other entity or convey, transfer or lease its properties and assets substantially as an entirety to any entity through liquidation, dissolution or otherwise.

(c) The funds and other assets of the Corporation shall not be commingled with those of any other individual, corporation, estate, partnership, joint venture, association, joint stock company, trust, unincorporated organization, or government or any agency or political subdivision thereof.

(d) The Corporation shall not hold itself out as being liable for the debts of any other entity, except as General Partner of the Partnership.

(e) The Corporation shall not form, or cause to be formed, any subsidiaries nor shall the Corporation permit the Partnership to form, or cause to be formed, any subsidiaries nor shall this Corporation acquire or cause the Partnership to acquire any interest as a general or limited

partner in any partnership other than the Partnership as specified herein and as permitted by the Partnership's Agreement of Limited Partnership, as amended (the "Partnership Agreement").

(f) The Corporation shall act solely in its corporate name and through its duly authorized officers or agents in the conduct of its business, and shall conduct its business so as not to mislead others as to the identity of the entity with which they are concerned.

(g) The Corporation shall maintain corporate records and books of account and shall not commingle its corporate records and books of account with the corporate records and books of account of any such entity. The books of the Corporation may be kept (subject to any provision contained in applicable law) inside or outside of the State of Florida at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

(h) The Board of Directors of the Corporation shall hold appropriate meetings (or obtain written consents in lieu of meetings in accordance with applicable law) to authorize all of its corporate actions. Regular meetings of the Board of Directors shall be held not less frequently than once per annum.

(i) Meetings of the Shareholders of the Corporation shall be held not less frequently than once per annum.

(j) The Corporation shall not enter into any amendment of any document evidencing or securing securities issued in any transaction to which it was a party without the unanimous vote of its Board of Directors.

(k) No loans or guarantees of loans or other indebtedness to third parties shall be made by the Corporation and no shareholder shall guaranty, become liable on or hold itself out as being liable for the debts of the Corporation, except for such loan or guarantees as are given by the Corporation or its shareholders at the time the Partnership obtains the equity and debt financing to acquire, develop and construct the Project.

(l) The Corporation shall at all times ensure that its capitalization is adequate in light of its business and purpose.

(m) The Corporation shall not dissolve or liquidate, in whole or in part, while the Bonds, as defined in that certain Insurance and Indemnity Agreement (the "Insurance Agreement"), entered into by and among Financial Security Assurance, Inc. ("FSA"), the Corporation and the Partnership are outstanding.

(n) While the Bonds are outstanding, the Corporation shall not incur any indebtedness other than Permitted Indebtedness, as such term is defined in the Insurance Agreement.

NOV. 30, 2000 5:23PM BRISBEN COMPANIES

NO. 244 P. 7/7

Florida Dept. of State Electronic Filing

Facsimile Audit No. H000000627745

(o) While the Bonds are outstanding, without the affirmative vote of its entire Board of Directors, including the Independent Director, neither the Corporation nor the shareholders of the Corporation shall: (i) institute any proceedings to adjudicate the Corporation or the Partnership as bankrupt or insolvent, (ii) consent to the institution of bankruptcy or insolvency proceedings against the Corporation or the Partnership, (iii) file a petition seeking or consent to reorganization or relief under any applicable federal or state law relating to bankruptcy with respect to the Corporation or the Partnership, (iv) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Corporation or the Partnership or a substantial part of the property of either the Corporation or the Partnership, (v) make any assignment for the benefit of the Corporation's or the Partnership's creditors, (vi) cause the Corporation or the Partnership to admit in writing its inability to pay its debts generally as they become due, or (vii) take any action, or cause the Corporation or the Partnership to take any action, in furtherance of any of the foregoing.

(p) While the Bonds are outstanding, the Corporation, on behalf of itself or the Partnership, shall not, without the prior written consent of FSA, transfer to any person or entity any assets of the Corporation or the Partnership, except pursuant to the terms of the Transaction Documents (as such term is defined in the Insurance Agreement), and except that the Corporation may transfer assets in the ordinary course of its or the Partnership's business and may declare and pay dividends to its shareholders in accordance with law and as permitted by the Partnership Agreement and the Insurance Agreement.

TENTH: While the Bonds are outstanding, the Corporation shall not amend, alter, change or repeal any provision contained in these Amended and Restated Articles of Incorporation or the Corporation's By-Laws without (a) the prior written consent of FSA, and (b) the affirmative vote of its entire Board of Directors, including the Independent Director, and (c) the confirmation of Standard & Poor's Ratings Group, a Division of The McGraw-Hill Companies, Inc., Moody's Investors Service and any other ratings agency rating the Bonds that such amendment, alteration, change or repeal will not cause a downgrading of the ratings assigned to the Bonds.

ELEVENTH: These Amended and Restated Articles of Incorporation supersede the existing Articles of Incorporation of the Corporation.

TWELFTH: These Amended and Restated Articles of Incorporation were approved by the Board of Directors and the shareholders. The number of votes cast for the amendment was sufficient for approval.


Robert E. Schuler, Vice President

01723.1