

N11750

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STATE OF FLORIDA
TALLAHASSEE, FLORIDA

*Amend
Restate*
MAY 24 2016
R. WHITE

**BECKER &
POLIAKOFF**

David G. Muller, Esq.
Shareholder
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4001 Tamiami Trail North
Suite 410
Naples, Florida 34103

May 18, 2016

Secretary of State
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

Re: Articles of Second Amended and Restated Articles of Incorporation – Eagle Creek
Community Association, Inc. / Document Number N11750
Client/Matter No. E15380-309654

Dear Sir/Madam:

Enclosed please find the original and one copy of the Articles of Second Amended and Restated Articles of Incorporation for the above-referenced Association. A check for \$35.00 is also enclosed for the filing fee.

Please file and return a copy to my attention. A self-addressed stamped envelope is enclosed for your convenience.

Please feel free to call me should you have any questions regarding this matter.

Sincerely,



David G. Muller, Esquire
For the Firm

DGM/ms

Enclosures (as stated)

ACTIVE E15380/309654:8544287_1

**SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
EAGLE CREEK COMMUNITY ASSOCIATION, INC.**

These are the Amended and Restated Articles of Incorporation of Eagle Creek Community Association, Inc., a Florida corporation not for profit, which were originally filed under the same name, Charter Number N11750, on October 25, 1985.

For historical reference, the street address of the initial principal office and the initial mailing address was One Eagle Creek Drive, Naples, Florida 33962. The street address of the initial registered office was One Eagle Creek Drive, Naples, Florida 33962, and the name of the initial registered agent was Marilyn Mantor. The current registered agent is American Property Management Services, LLC and the street address of the current registered office is 8825 Tamiami Trail East, Naples, Florida 34113. 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.

All terms defined in the Amended and Restated Master Covenants for Eagle Creek (the "Declaration") to which these Amended and Restated Articles of Incorporation are attached as an exhibit, shall be used with the same meanings as defined therein.

The Amended and Restated Articles of Incorporation of Eagle Creek Community Association, Inc. shall henceforth be as follows:

ARTICLE I

NAME: The name of the corporation is Eagle Creek Community Association, Inc. (the "Association").

ARTICLE II

PRINCIPAL OFFICE: The principal office of the corporation shall be located at American Property Management Services, LLC, 8825 Tamiami Trail East, Naples, Florida 34113, and subsequently at such other location in Collier County, Florida, as shall be determined by the Board of Directors.

ARTICLE III

PURPOSE AND POWERS: The purpose for which the Association is organized is to provide an entity for the operation of Eagle Creek, a residential development, located in Collier County, Florida.

The Association is organized and shall exist upon a non-stock basis as a Florida corporation not for profit, and no portion of any earnings of the Association shall be distributed or inure to the private benefit of any Member, Director or Officer of the Association. For the accomplishment of its purposes, the Association shall have all of the common law and statutory powers and duties of a Florida corporation not for profit, except as limited or modified by these Articles, the

Exhibit "B" to Amended and Restated Declaration of Master Covenants
(Second Amended and Restated Articles of Incorporation)

Declaration, the Bylaws of this Association, or Section 720, Florida Statutes (2013), all as amended from time to time and subject to the provisions of Article 1.1 of the Declaration; and it shall have all other powers and duties reasonably necessary to operate Eagle Creek, and effectuate the purposes for which the Association is organized pursuant to the Declaration of Covenants as it may hereafter be amended, including without limitation the following:

- (A) To levy and collect Assessments and Charges against the Members of the Association to defray the costs, expenses and losses of the Association, and to use the proceeds of Assessments in the exercise of its powers and duties.
- (B) To own, lease, maintain, repair, replace or operate the Common Areas.
- (C) To purchase insurance for the protection of the Association and its Members.
- (D) To reconstruct improvements after casualty and to make further improvements of the Community.
- (E) To make, establish, amend and enforce reasonable Rules and Regulations governing the use of all property within the Community (including Parcels, Neighborhood Common Areas, and Master Common Areas), the conduct thereon, and the operation of the Association.
- (F) To contract, and to sue and be sued; and to enforce the covenants and restrictions in the Governing Documents.
- (G) To employ accountants, attorneys, architects, or other professional personnel, and to contract for services necessary to perform the services required for proper operation and maintenance of the properties.
- (H) To acquire, own and convey real property, and to enter into agreements, or acquire leaseholds, easements memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities. It has this power regardless of whether the lands or facilities are contiguous to the lands of Eagle Creek, or if they are intended to provide enjoyment, recreation, or other use or benefit to the Members.
- (I) To borrow or raise money for any purposes of the Association; to draw, make, accept, endorse execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness; and to secure the payment of any thereof, and of the interest therein, by mortgage pledge, conveyance or assignment in trust, of the whole or any part of the rights or property of the Association, subject to any limitations in the Declaration. However, any borrowing in excess of \$500,000 in any fiscal year must be approved in advance by the affirmative vote of sixty (60%) percent of the Voting Interests present, in person or by proxy, and voting at a duly noticed Membership meeting at which a quorum is attained. However, in those cases where an emergency exists and urgent action is required to address an immediate and imminent threat to person, property, or the welfare of the
Exhibit "B" to Amended and Restated Declaration of Master Covenants
(Second Amended and Restated Articles of Incorporation)

Community, the approval of two-thirds (2/3) of the Board shall be sufficient to permit the Association to borrow funds in excess of \$500,000 as are required to address such need. This emergency borrowing authority shall include, but shall not be limited to, instances when a state of emergency is declared by the Governor of Florida, or by any governmental entity having authority to declare and emergency.

(J) To be responsible in perpetuity for maintenance of the Common Area conservation areas (i.e., all preserved, restored, or created wetlands areas and uplands buffer zones); and to take action against Parcel Owners or Neighborhood Associations, if necessary, to enforce the conditions of the conservation easements and the permit issued by South Florida Water Management District for the Community.

(K) To be the responsible entity to operate and maintain the Surface Water Management System as permitted by South Florida Water Management District, including but not limited to, all lakes, retention areas, culverts and related appurtenances.

All funds and the title to all property acquired by the Association shall be held for the benefit of the Members in accordance with the provisions of the Declaration, these Articles of Incorporation and the Bylaws.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS: Every person or entity who or which is a record owner of a fee or undivided fee interest in any Lot which is subject to the Declaration shall be a Member of the Association. Each such Owner shall notify the Association of the recordation of such an interest within thirty (30) days thereof and shall deliver a true copy of such instrument to the Association. If transfer of a Unit has occurred without approval of the Association in contravention of the provisions of the Declaration, the Association need not recognize a record Owner as a "Member", unless the Association chooses to ratify or waive its objection to the transfer of title.

Each Lot shall have one (1) vote which may be exercised as provided in the Bylaws.

ARTICLE V

TERM: The term of the Association shall be perpetual. If the Association is dissolved, the property consisting of the Surface Water Management System shall be conveyed to an appropriate agency of local government. If it is not accepted, those properties must be dedicated or conveyed to a similar non-profit corporation to assure continued maintenance in perpetuity.

ARTICLE VI

BYLAWS: The Bylaws of the Association may be altered, amended or rescinded in the manner provided therein.

ARTICLE VII

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

(A) **Proposal.** Amendments to these Articles may be proposed by a majority of the Directors or by written petition of at least ten percent (10%) of the Voting Interests. An amendment so proposed shall be submitted to a vote of the Members not later than the next annual meeting for which proper notice can be given.

(B) **Vote Required.** Except as otherwise required by Florida law, a proposed amendment to these Articles of Incorporation shall be adopted if it is approved by a majority of the Voting Interests present, in person or by proxy, and voting at any annual or special meeting at which a quorum has been attained, provided that notice of any proposed amendment has been given to the Members, and that the notice contains the full text of the proposed amendment or a summary of the changes.

(C) **Effective Date.** An adopted amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of the County, with the same formalities as required in the Bylaws for recording an amendment to the Bylaws.

ARTICLE VIII

DIRECTORS AND OFFICERS:

(A) The affairs of the Association will be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors.

(B) Directors of the Association are elected by the Members of the Neighborhood Associations in the manner described in the Bylaws of each, respective Association. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided in the Bylaws, and in the Bylaws of each, respective Neighborhood Association. Each Director shall have one (1) vote in the affairs of the Board.

(C) The business of the Association shall be conducted by the Officers designated in the Bylaws. The Officers shall be elected by the Board of Directors at the Board's first meeting following the annual meeting of the Members of the Association, and shall serve at the pleasure of the Board.

ARTICLE IX

INDEMNIFICATION:

To the fullest extent permitted by Florida law, the Association must indemnify and hold harmless every Director and every Officer of the Association against all expenses and liabilities, including attorneys fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he is or may become a party by reason of being or having been a Director or Officer of the Association. The foregoing right of indemnification shall not be available if a judgment or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved:

- (A) Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgment in its favor.
- (B) A violation of criminal law, unless the Director or Officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.
- (C) A transaction from which the Director or Officer derived an improper personal benefit.

In the event of an out-of-court settlement of litigation, the right to indemnification shall not apply unless a majority of the disinterested Directors approves the settlement and indemnification as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a Director or Officer may be entitled.

ACTIVE: 5560815_4