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F. J. D.

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SECRETARY OF STATE

**C. LEWIS**  
Feb. 10, 2014  
**EXAMINER**



FLORIDA DEPARTMENT OF STATE  
Division of Corporations

January 31, 2014

KNOTT EBELINI HART ATTORNEYS AT LAW  
PO BOX 2449  
FORT MYERS, FL 33902-2449

SUBJECT: THE FAIRWAYS OF HERONS GLEN ASSOCIATION, INC.  
Ref. Number: N03000008001

We have received your document for THE FAIRWAYS OF HERONS GLEN ASSOCIATION, INC. and your check(s) totaling \$35.00. However, the enclosed document has not been filed and is being returned for the following correction(s):

Please file the document as either Articles of Amendment or Restated Articles of Incorporation pursuant to applicable Florida Statutes.

A certificate must accompany the Restated Articles of Incorporation setting forth one of the following statements: (1) The restatement was adopted by the board of directors and does not contain any amendments requiring member approval; OR (2) If the restatement contains an amendment requiring member approval, the date of adoption of the amendment by the members and a statement that the number of votes cast for the amendment was sufficient for approval.

Please note, we do not file your bylaws or covenants.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6050.

Carolyn Lewis  
Regulatory Specialist II

Letter Number: 214A00002251

# Knott · Ebelini · Hart

Attorneys At Law

George H. Knott \*+  
Mark A. Ebelini  
Thomas B. Hart □

\* Board Certified Civil Trial Lawyer  
□ Board Certified Real Estate Lawyer  
+ Board Certified Business Litigation Lawyer  
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[Thart@knott-law.com](mailto:Thart@knott-law.com)

Aaron A. Haak ◇+  
David L. Ciccarello  
Mary E. Briedé

Michael E. Roeder, AICP  
Director of Zoning  
and Land Use Planning

January 23, 2014

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

Re: The Fairways of Herons Glen Association, Inc.  
Document Number: N03000008001

Dear Sir/Madam:

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


Please return all correspondence concerning this matter to the following:

Thomas B. Hart, Esquire  
Knott Ebelini Hart  
1625 Hendry Street, Suite 301  
Fort Myers, FL 33901  
[Thart@knott-law.com](mailto:Thart@knott-law.com)  
239-334-2722

Enclosed is a check in the amount of \$35.00 payable to the Florida Department of State.

Very truly yours,

KNOTT EBELINI HART

  
Paula A. Weller, FRP  
Paralegal to Thomas B. Hart  
Encls:

# Knott • Ebelini • Hart

Attorneys At Law

George H. Knott \*+  
Mark A. Ebelini  
Thomas B. Hart □

- Board Certified Civil Trial Lawyer
- Board Certified Real Estate Lawyer
- + Board Certified Business Litigation Lawyer
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Director of Zoning  
and Land Use Planning

[Thart@knott-law.com](mailto:Thart@knott-law.com)

February 6, 2014

Carolyn Lewis, Regulatory Specialist II  
Amendment Section  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

Re: The Fairways of Herons Glen Association, Inc.  
Document Number: N03000008001  
Letter Number: 214A00002251

Dear Ms. Lewis

Thank you for your letter of January 31, 2014. The Restated Articles of Incorporation and Certificate are enclosed.

If acceptable to return to the attention of:

Thomas B. Hart, Esquire  
Knott Ebelini Hart  
1625 Hendry Street, Suite 301  
Fort Myers, FL 33901

Very truly yours,

KNOTT EBELINI HART



Paula A. Weller, FRP  
Paralegal to Thomas B. Hart  
Encls:

APPROVED

ND  
FID

14 FEB -5 AM 8:47

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Nb3000008001

**RESTATED**  
**ARTICLES OF INCORPORATION**  
**OF**  
**THE FAIRWAYS OF HERONS GLEN ASSOCIATION, INC.**  
**(A CORPORATION NOT FOR PROFIT)**

In compliance with the requirements of the Laws of the State of Florida, and for the purpose of forming a corporation not for profit, the undersigned does hereby acknowledge:

1. Name of Corporation. The name of the corporation is The Fairways of Herons Glen ASSOCIATION, INC. Association, Inc. ("Association").
2. Principal Office. The principal office of the Association ~~2260 Corona Del Sol~~ is 2250 Avenida Del Vera, North Fort Myers, Florida 33917.
3. Registered Office - Registered Agent. The street address of the Registered Office of the Association is ~~1833~~ 1625 Hendry Street, Fort Myers, Florida 33901. The name of the Registered Agent of the Association is: ~~Christopher J. Shields~~ Thomas B. Hart.
4. Definitions. A declaration ~~entitled~~ titled Declaration of Restrictions and Covenants for The Fairways of Herons Glen (the "Declaration") will be recorded in the Public Records of Lee County, Florida, and shall govern all of the operations of a community to be known as The Fairways of Herons Glen. All initially capitalized terms not defined herein shall have the meanings set forth in the Declaration.
5. Purpose of the Association. The Association is formed to: (a) ~~provide for ownership, operation, maintenance and preservation of the Common Areas, and improvements thereon;~~ (b) perform the duties delegated to it in the Declaration; (c) administer the interests of the Association and the Owners; (d) ~~(c)~~ promote the health, safety and welfare of the Owners.
6. Not for Profit. The Association is a not for profit Florida corporation and does not contemplate pecuniary gain to, or profit for, its members.
7. Powers of the Association. The Association shall, subject to the limitations and reservations set forth in the Declaration, have all the powers, privileges and duties reasonably necessary to discharge its obligations, including, but not limited to, the following:
  - 7.1. To perform all the duties and obligations of the Association set forth in the Declaration and By-Laws, as herein provided.
  - 7.2. To enforce, by legal action or otherwise, the provisions of the Declaration and By-Laws and of all rules, regulations, covenants, restrictions and agreements governing or binding the Association and The Fairways of Herons Glen.
  - 7.3. To fix, levy, collect and enforce payment, by any lawful means, of all Assessments pursuant to the terms of the Declaration, these Articles and By-Laws.

## Article II – Powers and Duties

1. The Association shall have the powers granted to it by Common Law, Florida Statutes, the Declarations, the Articles of Incorporation, and these By-Laws, all of which shall be exercised by the Board of Directors unless the exercise thereof is otherwise restricted in the Declarations, these By-Laws, or the law.

## Article III - Membership

~~3.1.1. Voting Interests.~~ Each Owner ~~and Developer~~ shall be a Member of Association. No person who holds an interest in a Home only as security for the performance of an obligation shall be a Member of Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Home lot. There shall be one vote appurtenant to each Home lot. For the purposes of determining who may exercise the Voting Interest associated with each Home lot, the following rules shall govern:

~~3.1.1. Home Owned By Husband and Wife.~~ Either the husband or wife (but not both) may exercise the Voting Interest with respect to a Home. In the event the husband and wife cannot agree, neither may exercise the Voting Interest.

a. Lots owned by two or more persons or entities. Any one of the owners, but not more than one, may exercise the voting interest. In the event that the owners cannot agree, no vote may be exercised in such Lot / Home.

~~3.1.2. Trusts.~~ In the event that any trust owns a home, Association shall have no obligation to review the trust agreement with respect to such trust. If the Home is owned by Robert Smith, as Trustee, Robert Smith shall be deemed the Owner of the Home for all Association purposes. If the Home is owned by Robert Smith as Trustee for the Laura Jones Trust, then Robert Smith shall be deemed the Member with respect to the Home for all Association purposes. If the Home is owned by the Laura Jones Trust, and the deed does not reference a trustee, then Laura Jones shall be deemed the Member with respect to the Home for all Association purposes. If the Home is owned by the Jones Family Trust, the Jones Family Trust may not exercise its Voting Interest unless it presents to Association, in the form of an attorney opinion letter or affidavit reasonably acceptable to Association, the identification of the person who should be treated as the Member with respect to the Home for all Association purposes. If Robert Smith and Laura Jones, as Trustees, hold title to a Home, either trustee may exercise the Voting Interest associated with such Home. In the event of a conflict between trustees, the Voting Interest for the Home in question cannot be exercised. In the event that any other form of trust ownership is presented to Association, the decision of the Board as to who may exercise the Voting Interest with respect to any Home shall be final. Association shall have no obligation to obtain an attorney opinion letter in making its decision, which may be made on any reasonable basis whatsoever.

b. Entities. If a Lot/Home is owned in whole or in part by a corporation, partnership, trust, other legally recognized entity, or by multiple individuals, the owners shall designate one person or agent who shall be treated as the member for the purposes of voting interest associated with the lot. The Board may establish procedures and requirements for the making and receipt of such designations in order to ensure the integrity and order of voting procedures. If a vote is exercised by any one owner and such vote is not disputed by any owner prior to the counting of votes, the Association may accept the vote as valid regardless of any subsequent notice of a dispute.

~~3.1.3. Corporations.~~ If a Home is owned by a corporation, the corporation shall designate a person, an officer, employee, or agent who shall be treated as the Member who can exercise the Voting Interest associated with such Home.

~~3.1.4. Partnerships.~~ If a Home is owned by a limited partnership, anyone of the general partners may exercise the Voting Interest associated with such Home. By way of example, if the general partner of a limited partnership is a corporation, then the provisions hereof governing corporations shall govern which person can act on behalf of the corporation as general partner of such limited partnership. If a Home is owned by a general partnership, anyone of the general partners may exercise the Voting Interest associated with such Home. In the

the current members of the first Board who shall hold office until their successors are appointed or elected, or until removed, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
<del>ROBERT M. GABRIEL</del>	<del>2260 Corona Del Sire North Fort Myers, Florida 33917</del>
<del>MICHAEL J. LAPLANTE</del>	<del>2260 Corona Del Sire North Fort Myers, Florida 33917</del>
<del>DONALD METRIONE</del>	<del>2260 Corona Del Sire North Fort Myers, Florida 33917</del>

Rachel Cecchini	20731 Kaidon Lane	North Fort Myers, FL 33917
Frank Hallett	20790 Kaidon Lane	North Fort Myers, FL 33917
David McDonald	20789 Kaidon Lane	North Fort Myers, FL 33917
Lawrence Orr	20719 Kaidon lane	North Fort Myers, FL 33917

10. Dissolution. In the event of the dissolution of the Association other than incident to a merger or consolidation, any member may petition the Circuit Court having jurisdiction of the Judicial Circuit of the State of Florida for the appointment of a receiver to manage its affairs of the dissolved Association and to manage the common Areas, in the place and stead of the Association, and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association and its properties. ~~In addition, if Association is dissolved, the surface Water Management System shall be conveyed to an appropriate agency of local government. If a governmental agency will not accept the Surface Water Management System, then it must be dedicated to a similar non-profit corporation.~~

11. Duration. The Association shall have perpetual existence.

12. Amendments.

~~12.1. General Restrictions on Amendments. Notwithstanding any other provision herein to the contrary, no amendment to these Articles shall affect the rights of Developer unless such amendment receives the prior written consent of Developer, as applicable, which may be withheld for any reason whatsoever. If the prior written approval of any governmental entity or agency having jurisdiction is required by applicable law or governmental regulation for any amendment to these Articles, then the prior written consent of such entity or agency must also be obtained. No amendment shall be effective until it is recorded in the Public Records.~~

~~12.2. Amendments Prior to the Turnover Date. Prior to the Turnover Date, Developer shall have the right to amend these Articles as it deems appropriate, without the joinder or consent of any person or entity whatsoever. Developer's right to amend under this Section is to be construed as broadly as possible. In the event that Association shall desire to amend these Articles prior to the Turnover Date, Association must first obtain Developer's prior written consent to any proposed~~

~~3.7:~~ 6. Action of Members. Decisions that require a vote of the Members must be made by a concurrence of a majority of the Voting Interests present in person or by proxy, represented at a meeting at which a quorum has been obtained unless provided otherwise in the Declaration, the Articles, or these By-Laws.

~~3.8:~~ 7. Proxies. At all meetings, Members may vote their Voting Interests in person or by proxy. All proxies shall comply with the provisions of ~~Section 720.306(6)~~ of the Florida Statutes as amended ~~from~~ from time to time, be in writing, and be filed with the Secretary at, or prior to, the meeting. Every proxy shall be revocable prior to the meeting for which it is given.

#### Article V – Board of Directors

##### ~~4. —~~ Board of Directors.

~~4.9:~~ 1. Number. The affairs of Association shall be managed by a Board consisting of three to seven (3 to 7) persons. The number shall be as determined by the Board from time to time. ~~Board members appointed by Developer need not be Members of Association.~~ Board members elected by the other Members must be Members of Association.

~~4.10:~~ 2. Term of Office. The election of Directors shall take place ~~after Developer no longer has the authority to appoint the Board and shall take place~~ at the Annual Members Meeting, ~~or on the Turnover Date.~~ Directors shall be elected for a 3 year term ending upon the election of new Directors ~~at the following Annual Members Meeting (except that the term of the Board appointed by the Developer shall extend until the date designated by Developer or until the Turnover Date).~~

~~4.11:~~ 3. Removal. ~~Any vacancy created by the resignation or removal of a Board member appointed by Developer may be replaced by Developer. Developer may replace or remove any Board member appointed by Developer in Developer's sole and absolute discretion.~~ In the event of a removal pursuant to Article VII, Section 4 herein, or a death or resignation of a Director elected by the Members, the remaining Directors may fill such vacancy. Directors may be removed with or without cause by the vote or agreement in writing of Members holding a majority of the Voting Interests.

~~4.12:~~ 4. Compensation. No Director shall receive compensation for any service rendered as a Director to Association; provided, however, any Director may be reimbursed for actual expenses incurred as a Director. No remuneration shall be accepted by the Board of Directors, Officers or Managing Agent(s) from vendors, independent contractors or others providing goods or services to the Association whether in the form of commissions, finder's fees, service fees, prizes, gifts or otherwise.

~~4.13:~~ 5. Action Taken Without a Meeting. Except to the extent prohibited by law, the Board shall have the right to take any action without a meeting by obtaining the written approval of the required number of Directors. Any action so approved shall have the same effect as though taken at a meeting of Directors and shall be stated and recorded in the minutes of the next Board Meeting.

~~4.14:~~ 6 Appointment and Election of Directors. ~~Until the Community Completion Date, the Developer shall have the unrestricted power to appoint all Directors of Association. From and after the Community Completion Date, or such earlier date determined by Developer in its sole and absolute discretion (the "Turnover Date"), The Members shall elect all Directors of Association at or in conjunction with the Annual Members Meeting of the Members.~~

~~4.15:~~ 7. Election Process. Election to the Board shall be by secret written ballot, unless unanimously waived by all Members present. The persons receiving the largest numbers of votes shall be elected. Cumulative voting



misconduct. The foregoing rights shall be in addition to, and not exclusive of, all other rights to which such Director or Officers may be entitled.

17. Transactions in Which Directors or Officers are Interested. No contract or transaction between the Association and one (1) or more of its Directors or Officers ~~or Developer~~, or between the Association and any other corporation, partnership, association, or other organization in which one (1) or more of its Officers or Directors are officers, directors or employees or otherwise interested shall be invalid, void or voidable solely for this reason, or solely because the Officer or Director is present at or participates in meetings of the Board thereof which authorized the contract or transaction, or solely because said Officers' or Directors' votes are counted for such purpose. No Director or Officer of the Association shall incur liability by reason of the fact that such Director or Officer may be interested in any such contract or transaction. Interested Directors shall disclose the general nature of their interest and may be counted in determining the presence of a quorum at a meeting of the Board which authorized the contract or transaction.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the Laws of the State of Florida, the undersigned being the Incorporator of this Association, has executed these Articles of Incorporation as of this 9th day of September, 2003, 11th day of November, 2013.

APPROVED  
AND  
FILED  
14 FEB -5 AM 8:47  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

APPROVED  
NO  
FILED

14 FEB -5 AM 8:47

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

## Exhibit "D"

### Secretary's Certified Record

Corporation's Secretary's Certified Record of Consent to amendments to the Declaration of Covenants, Restrictions and Conditions for The Fairways of Herons Glen and amendments to the By-laws of The Fairways of Herons Glen Association, Inc.

I, Frank Hallett, duly elected Secretary of The Fairways of Herons Glen Association, Inc., hereby certify that the following record is a true and accurate summary of the Association's voting and written consents to amendments to the:

1) Declaration of Covenants, Restrictions and Conditions for The Fairways of Herons Glen

For: 65

Against: 1

**RESTATED**

2) Articles of incorporation of The Fairways of Herons Glen Association, Inc.

For: 66

Against: 0

3) By-laws of The Fairways of Herons Glen Association, Inc.

For: 66

Against: 0

4) The Board of Directors vote on each of the above-described amendments was unanimous for approval.

All amendments were adopted by the necessary affirmative vote of the Board of Directors and the Members as stated in the prior approved documents, respectively.

  
\_\_\_\_\_  
Frank Hallett, Secretary

11-11-2013