

Division of Corporations

Page 1 of 1

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FLORIDA NON-PROFIT CORPORATION

Penzance Estates Homeowners' Association, Inc.

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ARTICLES OF INCORPORATION
OF
PENZANCE ESTATES HOMEOWNERS' ASSOCIATION, INC.

RECORDED
15 JAN 12 11:31 AM
CLERK OF CIRCUIT COURT
LEE COUNTY, FLORIDA

Pursuant to Section 617.02011, Florida Statutes, the undersigned hereby executes these Articles of Incorporation for the purpose of forming a Corporation under the Florida Not-for-Profit Business Corporate Acts.

ARTICLE I

NAME: The name of the corporation, herein called the "Association", is Penzance Estates Homeowners' Association, Inc., and its address is 9001 Daniels Parkway, Suite 200, Fort Myers, Florida 33912.

ARTICLE II

DEFINITIONS: The definitions set forth in the Declaration of Covenants and the Florida Not-For-Profit Corporations Act, with particular reference to Section 720.301, F.S., (2003), shall apply to terms used in these Articles.

ARTICLE III

PURPOSE AND POWERS: The purpose for which the Association is organized is to provide an entity pursuant to the Florida Not-for-Profit Corporations Act for the operation of Penzance Estates (the "Community") located in Lee County, Florida. The Association is organized and shall exist on a non-stock basis as a corporation not for profit under the laws of the State of Florida, and no portion of any earnings of the Association shall be distributed or inure to the private benefit of any member, Director or officer. For the accomplishment of its purposes, the Association shall have all of the common law and statutory powers and duties of a corporation not for profit and of a homeowners' association under the laws of the State of Florida, except as expressly limited or modified by these Articles, the Declaration of Covenants (the "Declaration"), *Bylaws and the Rules and Regulations (these Articles, the Declaration, Bylaws and Rules and Regulations shall be collectively referred to herein as the "Governing Documents"); and it shall* have all of the powers and duties reasonably necessary to operate the Community pursuant to the Governing Documents as they may hereafter be amended, including but not limited to the following:

- A. To make and collect assessments against members of the Association to defray the costs, expenses and losses of the Association, and to use the funds in the exercise of its powers and duties.
- B. To protect, maintain, repair, replace and operate the Association Property, and Common Areas including, without limitation, the surface water management system.

H04000255265 3

C. To purchase insurance for the protection of the Association and its members.

D. To repair and reconstruct improvements after casualty, and to make further improvements of the Association property.

E. To make, amend and enforce reasonable rules and regulations as set forth in the Declaration.

F. To enforce the provisions of the laws of the State of Florida that are applicable to the Community, and the Governing Documents.

G. To contract for the management and maintenance of the Community and the Association Property, and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by law or by the Declaration to be exercised by the Board of Directors or the membership of the Association.

H. To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the Community.

I. To borrow money as necessary to perform its other functions hereunder.

J. To grant, modify or move any easement.

K. To sue and to be sued.

L. To own and convey property.

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 Governing Documents.

ARTICLE IV

MEMBERSHIP:

A. The members of the Association shall be the record owners of a fee simple interest in one or more Parcels. Class A members of the Association are all owners other than Developer. The Class B member is the Developer as further provided in the Bylaws.

B. The share of a member in the funds and assets of the Association cannot be assigned or transferred in any manner except as an appurtenance to his Parcel.

C. Except as otherwise provided in the Declaration and Bylaws with respect to the Class B Member, the owners of each Parcel, collectively, shall be entitled to one vote in Association matters. The manner of exercising voting rights shall be as set forth in the Bylaws.

ARTICLE V

TERM: The term of the Association shall be perpetual.

H04000255265 3

ARTICLE VI

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

ARTICLE VII

DIRECTORS AND OFFICERS:

A. The affairs of the Association shall 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 shall initially be appointed by and shall serve at the pleasure of the Developer, and following transition shall be elected by the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

C. The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected each year by the Board of Directors at its first meeting after the annual meeting of the members of the Association, and they shall serve at the pleasure of the Board.

The initial Directors are as follows:

Kevin Higginson
9001 Daniels Parkway, Suite 200
Fort Myers, Florida 33912

Vince Gullo
9001 Daniels Parkway, Suite 200
Fort Myers, Florida 33912

David Knizner
9001 Daniels Parkway, Suite 200
Fort Myers, Florida 33912

The initial Officers are as follows:

David Knizner - President
Vince Gullo - Vice President
Kevin Higginson - Secretary

ARTICLE VIII

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

H04000255265 3

A. Proposal. Amendments to these Articles may be proposed by a majority of the Board or by a written petition to the Board, signed by at least fifty (50%) percent of the voting interests of the Association.

B. Procedure. Upon any amendment to these Articles being proposed by said Board or members, such proposed amendment shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can be given.

C. Vote Required. Prior to transition of control of the Board of Directors from the Developer of the Community, amendments shall be adopted by the Board of Directors. Subsequent to transition of control of the Board of Directors, a proposed amendment shall be adopted if it is approved by at least two-thirds (2/3rds) of the voting interests in the Association who are present and voting, in person or by proxy, at any annual or special meeting called for the purpose. As long as Developer owns a Parcel an amendment to the Articles of Incorporation shall not be effective without the prior written consent of Developer, which consent may be denied in Developer's discretion, provided, further, that regardless of whether Developer owns a Parcel, no amendment shall be effective if it affects the Developer's rights or alters any provision made for the Developer's benefit.

D. Effective Date. An amendment shall become effective upon filing with the Secretary of State and recording a Certificate of Amendment in the Public Records of Lee County, Florida, with the formalities required for the execution of a deed.

ARTICLE IX

INDEMNIFICATION: To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every officer of the Association against all expenses and liabilities, including attorney 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 may be a party because of his being or having been a Director or officer of the Association. The foregoing right of indemnification shall not be available if a judgement 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 judgement 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 a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement 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.

H04000255265 3

ARTICLE X

On dissolution the assets (including dedicated property and corresponding infrastructure) of the Association shall be conveyed or dedicated to a similar non-profit corporation, association, trust or other organization organized and operated to assure the continued maintenance and operation of the Common Areas and other duties of the Association.

ARTICLE XI

INCORPORATOR: The name and address of the Incorporator is as follows:

Steven I. Winer
2320 First Street, Suite 1000
Fort Myers, Florida 33901

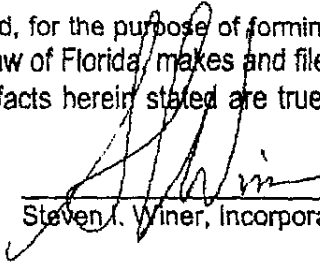
ARTICLE XII

REGISTERED OFFICE AND REGISTERED AGENT: The name and address of the Registered Agent and the address of the Registered Office is:

R&A Agents, Inc.
Attention: Steven I. Winer
2320 First Street, Suite 1000
Fort Myers, Florida 33901

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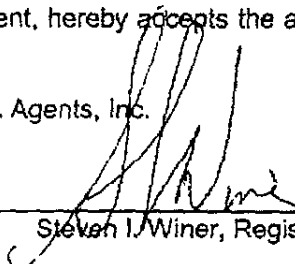
IN WITNESS WHEREOF, the undersigned, for the purpose of forming a Corporation to do business with the State of Florida, under the law of Florida, makes and files these Articles of Incorporation, hereby declares and certifies the facts herein stated are true and hereunto set my hand this 29 day of December, 2004.



Steven I. Winer, Incorporator

ACCEPTANCE OF REGISTERED AGENT

The undersigned, being the initial registered agent, hereby accepts the appointment as the Registered Agent for the Corporation.

R&A Agents, Inc.
By: 

Steven I. Winer, Registered Agent