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08 MAR 28 PM 3:53
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

3/31/08

COVER LETTER

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

SUBJECT: MANDALAY ESTATES HOMEOWNERS' ASSOCIATION, INC.
(PROPOSED CORPORATE NAME - MUST INCLUDE SUFFIX)

Enclosed is an original and one(1) copy of the Articles of Incorporation and a check for :

☐ \$70.00
Filing Fee

☐ \$78.75
Filing Fee &
Certificate of
Status

☒ \$78.75
Filing Fee
& Certified Copy

☐ \$87.50
Filing Fee,
Certified Copy
& Certificate

ADDITIONAL COPY REQUIRED

FROM: JEFFREY L. KAPLAN
Name (Printed or typed)

950 S. WINTER PARK DR., SUITE 350-B
Address

CASSELBERRY, FL 32707
City, State & Zip

407-260-5432
Daytime Telephone number

NOTE: Please provide the original and one copy of the articles.

**ARTICLES OF INCORPORATION
of
MANDALAY ESTATES HOMEOWNERS' ASSOCIATION, INC.**

FILED
08 MAR 28 PM 3:54
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLE 1: NAME

The name of the corporation is: **MANDALAY ESTATES HOMEOWNERS' ASSOCIATION, INC.** (hereinafter referred to as the "Association"). The Effective date shall be the date on which these Articles are filed in the office of the Secretary of State, State of Florida.

ARTICLE 2: DEFINITIONS

Unless defined in these Articles or the Bylaws, all terms used in the Articles and Bylaws shall have the same meanings as used in the **DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS FOR MANDALAY AND MANDALAY ESTATES** (the "Declaration").

ARTICLE 3: PURPOSE

The purposes for which the Association is organized are as follows:

3.1 To operate as a corporation not-for-profit pursuant to Chapter 617 and as a homeowners' association pursuant to Chapter 720, both of the Florida Statutes.

3.2 To administer, enforce and carry out the terms and provisions of the Declaration as same may be amended or supplemented from time to time.

3.3 To administer, enforce and carry out the terms and provisions of any other Declaration of Covenants and Restrictions or similar document, submitting property to the jurisdiction of or assigning responsibilities, rights or duties to the Association and accepted by the Board of Directors of the Association (the "Board").

3.4 To promote the health, safety, comfort and social and economic welfare of the Members of the Association and the Owners and Residents of lots in **MANDALAY** and **MANDALAY ESTATES** as authorized by the Declaration, by these Articles, and by the Bylaws.

ARTICLE 4: POWERS

The Association shall have the following powers:

4.1 All of the common law and statutory powers of a corporation not-for-profit under the laws of the State of Florida which are not in conflict with the terms of these Articles.

4.2 To enter into, make, establish and enforce rules, regulations, Bylaws, covenants, restrictions and agreements to carry out the purposes of the Association.

4.3 To make and collect Assessments for Common Expenses from Owners to defray the costs, expenses, reserves and losses incurred or to be incurred by the Association, and to use the proceeds thereof in the exercise of the Association's powers and duties.

4.4 To own, purchase, sell, mortgage, lease, administer, manage, operate, maintain, improve, repair and/or replace real and personal property.

4.5 To hold funds for the exclusive benefit of the Members of the Association as set forth in these Articles and provided in the Declaration and the Bylaws.

4.6 To purchase insurance for the protection of the Association, its Officers, Directors and Members, and such other parties as the Association may determine to be in the best interest of the Association.

4.7 To operate, maintain, repair, and improve all Common Property and such other portions of **MANDALAY** and **MANDALAY ESTATES** as may be determined by the Board from time to time.

4.8 To honor and perform under all contracts and agreements entered between third parties and the Association or third parties and the Developer which are assigned to the Association.

4.9 To exercise architectural control, either directly or through appointed committees, over all buildings, structures and improvements to be placed or constructed upon any portion of **MANDALAY** and **MANDALAY ESTATES**. Such control shall be exercised pursuant to the Declaration.

4.10 To provide for private security, fire safety and protection, and similar functions and services within **MANDALAY** and **MANDALAY ESTATES**, as the Board in its discretion determines necessary or appropriate, although such power shall not impose an obligation on the Board or the Association to provide such functions and services.

4.11 To provide, purchase, acquire, replace, improve, maintain and/or repair such buildings, structures, streets, pathways, and other structures, landscaping, paving and equipment, both real and personal, related to the health, safety and social welfare of the Members of the Association and the Owners and Residents of **MANDALAY** and **MANDALAY ESTATES**, as the Board in its discretion determines necessary or appropriate.

4.12 To employ personnel necessary to perform the obligations, services and duties required of or to be performed by the Association and/or to contract with others for the performance of such obligations, services and/or duties and to pay the cost thereof in accordance with whatever contractual arrangement the Board shall enter.

4.13 The Association shall operate, maintain and manage the Surface Water or Stormwater Management System in a manner consistent with the St. Johns River Water Management District Permit requirements and applicable District rules, and shall assist in the enforcement of the Declaration of Covenants and Restrictions which relate to the Surface Water or Stormwater Management System. The Association shall levy and collect adequate assessments against members of the Association for the costs of maintenance and operation of the Surface Water or Stormwater Management System.

ARTICLE 5: MEMBERS

5.1 Membership. Every Person who is an Owner shall be a Member. Notwithstanding anything else to the contrary set forth in this Article, any Person who holds the interest merely as security for the performance of an obligation shall not be a Member. Membership in the Association shall be

appurtenant to each Lot and may not be separated from ownership of that Lot. The record title holder to each Lot shall automatically become a Member and shall be assured of all rights and privileges thereof upon presentation of a photostatically or otherwise reproduced copy of that Owner's deed to the secretary of the Association for placement in the records of the Association. To the extent that the deed shall pass title to a new Lot Owner from an existing Lot Owner, membership in the Association shall be transferred from the existing Lot Owner to the new Lot Owner. In no event shall any mortgagee or other party holding any type of security interest in a Lot or the residence constructed thereon be a Member unless and until any of those parties obtain or receive fee simple title to the Lot.

5.2 Transfer Of Membership. Transfer of membership in the Association shall be established by the recording in the Public Records of Orange County, Florida of a deed or other instrument establishing a transfer of record title to any Lot for which membership has already been established. The Owner designated by such instrument of conveyance thereby becomes a Member, and the prior Member's membership thereby is terminated. In the event of death of a Member, his membership shall be automatically transferred to his heirs or successors in interest. Notwithstanding the foregoing, the Association shall not be obligated to recognize such a transfer of membership until such time as the Association receives a true copy of the recorded deed or other instrument establishing the transfer of ownership of the Lot, and it shall be the responsibility and obligation of both the former and the new Owner of the Lot to provide such true copy of said recorded instrument to the Association.

5.3 Prohibition against Transfer. The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Lot associated with the membership of that Member, nor may a membership be separately assigned, hypothecated or transferred in any manner except as an appurtenance to the Lot.

5.4 Members' Voting Rights. The Association shall have two (2) classes of voting membership:

5.4.1 Class A. Class A Membership shall be all those Owners as defined in this Article with the exception of the Developer (as long as the Class B Membership shall exist, and thereafter, the Developer shall be a Class A Member to the extent it would otherwise qualify). Except as provided below, Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by this Article. When more than one Person holds the interest or interests in any Lot, all the Persons shall be Members, but the vote for the Lot shall be exercised only by that one Person who is entitled to vote. In no event shall more than one vote be cast with respect to any Lot.

5.4.2 Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to three (3) votes for each Lot owned by the Class B Member. The Class B membership shall cease and terminate upon the earlier of the following: (i) after ninety percent (90%) of the Lots are deeded to Owners other than a builder, with a completed residence thereon; or (ii) the date Developer voluntarily relinquishes its right to continue to designate members of the Board, and records in the Public Records of Orange County, Florida a Certificate of Termination of Interest in **MANDALAY** and **MANDALAY ESTATES**. For purposes hereof the term "purchasers" shall be deemed to mean ultimate purchasers of a Lot for their use as a residence. Upon termination of the Class B Membership as provided for in this Declaration, the Class B membership shall convert to Class A Membership with voting strength as set forth above for Class A membership.

5.5 Voting by Co-Owners. If the Lot associated with the membership of a Member is owned by more than one person, the vote(s) of the Member may be cast at any meeting by any Co-Owner of the Lot. If, when the vote(s) is (are) to be cast, a dispute arises between the Co-Owners as to how the vote(s) will be cast, they shall lose the right to cast their vote(s) on the matter being voted upon, but their vote(s) continue to be counted for purposes of determining the existence of a quorum. When more than one person holds such interest or interests in any Lot, all such persons shall be Members and vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

5.6 Proxies. Every Member entitled to vote at a meeting of the Members, or to express consent or dissent without a meeting, may authorize another person to act on the Member's behalf by a proxy signed by such Member. Any proxy shall be delivered to the Secretary of the Association or the person acting as Secretary at the meeting, at or prior to the time designated in the order of business for so delivering such proxies. Proxies shall be in writing and shall be valid only for the particular meeting designated therein, and any adjournments of that meeting. Every proxy shall be revocable at any time at the pleasure of the Member executing it.

5.7 Right of the Developer. Notwithstanding anything contained in these Articles, the Bylaws or the Declaration to the contrary, so long as the Developer owns any portion of the Property and the Developer has not caused to be recorded in the Public Records of Orange County, Florida, a Certificate of Termination of Interest in **MANDALAY** and **MANDALAY ESTATES**, no vote of the Members shall be effective without approval in writing by the Developer. The Certificate of Termination of Interest in **MANDALAY** and **MANDALAY ESTATES** will terminate any and all right, title, interest and obligation of the Developer in the operation and control of the Association. Thereafter, the Developer shall be a Member with the number of votes determined in accordance with Section 5.4.

5.8 Calculation of Votes. Any question concerning the number of votes which may be cast by a Member shall be decided by the Board.

ARTICLE 6: MEMBERS OF THE BOARD

6.1 Members of the Board. The affairs of the Association shall be managed by a Board consisting of not less than three (3) members, nor more than nine (9) members, and which shall always be an odd number. The number of members of the Board shall be determined in accordance with the Bylaws. In the absence of such determination, there shall be three (3) members of the Board.

6.2 The Developer shall appoint members of the Board of Association as follows:

6.2.1 The Developer shall have the right to appoint all members of the Board until the Developer holds less than five percent (5%) of the total number of votes of Members as determined by Article 5 hereof.

6.2.2 Thereafter, unless the Developer has caused to be recorded in the Public Records of Orange County, Florida, a Certificate of Termination of Interest in **MANDALAY** and **MANDALAY ESTATES**, the Developer shall have the right to appoint a majority of the members of the Board so long as the Developer owns any Lots within **MANDALAY** and **MANDALAY ESTATES**.

6.3 After the Developer no longer has the right to appoint all members of the Board under Section 6.2.1, or earlier if the Developer so elects, then and only then shall any member of the Board be elected by the Members of the Association.

6.4 All of the duties and powers of the Association exacting under Chapters 617 and 720 of the Florida Statutes, the Declaration, these Articles and the Bylaws shall be exercised exclusively by the Board, its agents, contractors or employees, subject to approval by the Members only when specifically required.

6.5 A member of the Board may be removed and vacancies on the Board shall be filled in the manner provided by the Bylaws. However, any member of the Board appointed by the Developer may only be removed by the Developer, and any vacancy on the Board of a member appointed by the Developer shall be filled by the Developer.

6.6 The names and addresses of the members of the Board who shall hold office until their successors are elected or appointed, or until removed, are as follows:

Scott Massey
5850 T.G. Lee Blvd. Suite 250
Orlando, Fl. 32822

Michael Bierly
2160 W. State Road 434, Suite 100
Longwood, Florida 32779

William S. Carr
5850 T.G. Lee Blvd. Suite 250
Orlando, Fl. 32822

ARTICLE 7: OFFICERS

The Officers of the Association shall be a President, Vice President, Secretary, Treasurer and such other Officers as the Board may from time to time by resolution create. The Officers shall serve at the pleasure of the Board, and the Bylaws may provide for the removal from office of Officers, for filling vacancies, and for the duties of the Officers. The Names of the Officers who shall serve until their successors are designated by the Board are as follows:

President	Scott Massey
Vice President	William S. Carr
Secretary/Treasurer	Michael Bierly

ARTICLE 8: INDEMNIFICATION

8.1 The Association shall indemnify any Person who was or is a party or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a member of the Board, Employee, Officer or Agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably

believed to be in, or not opposed to, the best interest of the Association; and, with respect to any criminal action or proceeding, if he had no reasonable cause to believe his conduct was unlawful; or matter as to which such Person shall have been adjudged to be liable for gross negligence or willful misfeasance or malfeasance in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in view of all the circumstances of the case, such Person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, in and of itself, create a presumption that the Person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the Association; and with respect to any criminal action or proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

8.2 To the extent that a member of the Board, Officer, Employee or Agent of the Association is entitled to indemnification by the Association in accordance with this Article 8, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonable incurred by him in connection therewith.

8.3 Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the members of the Board, Officer, Employee or Agent of the Association to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article.

8.4 The indemnification provided by this Article shall not be deemed exclusive of any rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any Bylaw, agreement, vote of Members or otherwise. As to action taken in an official capacity while holding office, the indemnification provided by this Article shall continue as to a Person who has ceased to be a member of the Board, Officer, Employee, or Agent of the Association and shall inure to the benefit of the heirs, executors and administration of such a Person.

8.5 The Association shall have the power to purchase and maintain insurance on behalf of any Person who is or was a member of the Board, Officer, Employee or Agent of the Association, or is or was serving at the request of the Association as a member of the Board, Officer, Employee or Agent of another corporation, partnership, joint venture, trust or other enterprises, against any liability asserted against him and incurred by him in any such capacity, as arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

ARTICLE 9: BYLAWS

The initial Bylaws shall be adopted by the Board, and may be altered, amended or rescinded in the manner provided by the Bylaws.

ARTICLE 10: AMENDMENTS

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

10.1 Initiation. A Resolution to amend these Articles may be proposed by a majority of the members of the Board, or by Members holding not less than ten percent (10%) of the votes of the entire membership of the Association.

10.2 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

10.3 Adoption of Amendments. Members of the Board and Members not present in person or by proxy at the meeting to consider the amendment may express their approval in writing, provided such approval is delivered to the Secretary at or prior to the meeting. A Resolution adopting a proposed amendment to the Articles must bear the approval of not less than two-thirds (2/3) of the votes of the Members of the Association entitled to vote on such action.

10.3.1 As long as the Developer appoints a majority of the members of the Board, the Developer shall have the right to unilaterally amend these Articles without the joinder or approval of any member of the Board or any Member. No amendment to these Articles shall be effective without the written approval of the Developer as long as (1) the Developer owns any portion of the Property and (2) the Developer has not caused to be recorded in the Public Records of Orange County, Florida, a Certificate of Termination of Interest in **MANDALAY** and **MANDALAY ESTATES**.

10.3.2 A Resolution for the adoption of the proposed amendment shall be adopted by Members having not less than a majority of the votes of the entire membership of the Association.

10.4 Restrictions on Amendment. No amendment shall make any changes in the qualification for membership nor in the voting rights or property rights of Members without the approval of all Members. Until the turnover date, as defined in the Declaration, no amendment shall make any changes which would in any way affect any of the rights, privileges, power or options herein provided in favor of, or reserved to, the Developer, unless the Developer shall join the execution of the amendment.

10.5 Filing Amendments. Upon the approval of an amendment to these Articles, Articles of Amendment shall be executed and delivered to the Department of State as provided by law, and a copy certified by the Department of State shall be recorded in the Public Records of Orange County, Florida, as an amendment to the Declaration.

ARTICLE 11: TERM

11.1 Existence of the Association shall commence with the filing of the Articles of Incorporation with the Secretary of State, Tallahassee, Florida. The Association shall exist in perpetuity.

11.2 In the event of termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the final Surface Water or Stormwater Management System must be transferred to and accepted by an entity which would comply with Section 40C-42.027, F.A.C., and be approved by the St. Johns River Water Management District prior to such termination, dissolution or liquidation.

11.3 The Association may be dissolved with written assent signed by not less than two-thirds (2/3) of the Members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is

refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.

ARTICLE 12: INCORPORATOR

The name and street address of the Incorporator is:

Jeffrey L. Kaplan
Kaplan Law Firm, P.L.
950 S. Winter Park Drive, Suite 350-B
Casselberry, FL 32707

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MAR 28 PM 3:54
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLE 13: INITIAL REGISTERED OFFICE ADDRESS
AND NAME OF INITIAL REGISTERED AGENT

The street address of the Initial Registered Office of the Association is 950 S. Winter Park Drive, Suite 350-B, Casselberry, FL 32707. The Initial Registered Agent of the Association at that address is Jeffrey L. Kaplan.

IN WITNESS WHEREOF, the Incorporator and the Initial Registered Agent have executed the Articles.


Jeffrey L. Kaplan

Date: 3/27/08

**CERTIFICATE DESIGNATION
REGISTERED AGENT FOR
THE SERVICE OF PROCESS WITHIN THIS STATE**

Pursuant to Chapter 489, Florida Statutes, the following is submitted in compliance with said Act:

MANDALAY ESTATES HOMEOWNERS' ASSOCIATION, INC., desiring to organize as a corporation under the laws of the State of Florida, with its principal office at 5850 T.G. Lee Blvd. Suite 250, Orlando, Fl. 32822, has named Jeffrey L. Kaplan, located at the above Registered Office, as its Registered Agent to accept Service of Process within this state.

ACKNOWLEDGMENT; having been named to accept Service of Process for the above stated corporation, at place designated in this Certificate, I hereby agree to act in this capacity, and further agree to comply with the provisions of said Act relative to keeping open said office.


Jeffrey L. Kaplan

Date: 3/27/08