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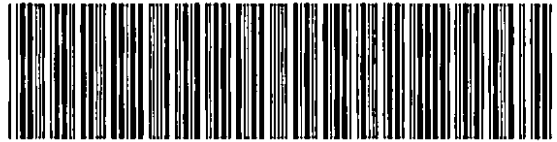
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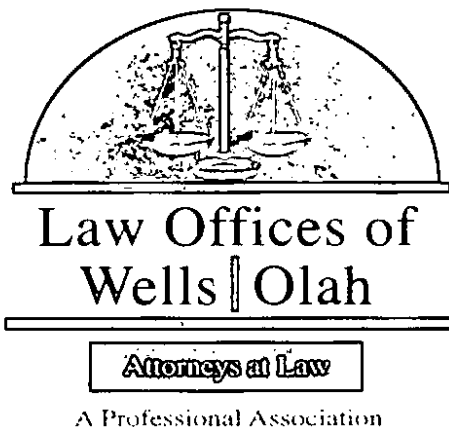
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Condominium, Homeowner
and Cooperative Associations

Kevin T. Wells, Esq.
Paul E. Olah, Jr., Esq.



Civil Litigation
Construction Litigation

Michael W. Cochran, Esq.
Jackson C. Kracht, Esq.
Joseph A. Gugino, Esq.
Brett M. Sarason, Esq.

January 11, 2019

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

Re: Certificate of Amendment
Marbella Community Association, Inc.

Dear Sir or Madam:

Please file the enclosed original Amendments to the Articles of Incorporation for the above-referenced corporation. Also enclosed is a check from the Association in the amount of \$43.75 for the filing fee and certified copy fee. Please return a **certified copy** to the undersigned at your earliest convenience.

Thank you for your assistance in this matter.

Very truly yours,

LAW OFFICES OF WELLS | OLAH, P.A.

Brett M. Sarason, Esq.

BMS/elp
Enclosures

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
FOR
MARBELLA COMMUNITY ASSOCIATION, INC.**

*[Substantial rewording of Articles of Incorporation.
See existing Articles of Incorporation for present text.]*

The Members of Marbella Community Association, Inc. adopt these Amended and Restated Articles of Incorporation (the "Articles of Incorporation"). The original Articles of Incorporation were filed with the Florida Department of State, Division of Corporations, on June 14, 1989.

**ARTICLE 1
Identity and Principal Address**

1.1 Name of Corporation and Principal Address.

The name of the corporation shall be Marbella Community Association, Inc. (the "Community Association"). The principal address of the Community Association shall be 16 Church Street, Osprey, Florida 34229. The Community Association's Board of Directors may change the location of the principal address from time to time.

**ARTICLE 2
Purpose**

2.1 Purpose.

(a) Purpose. The purpose for which the Community Association is organized is to provide an entity pursuant to Chapter 720, Florida Statutes (the "Homeowners' Association Act"), for the operation of Marbella (the "Community"), upon land situated in Sarasota County, Florida.

(b) Distribution of Income. The Community Association shall make no distribution of income to its Members, Directors or Officers.

**ARTICLE 3
Powers**

3.1 Powers.

(a) Common Law and Statutory Powers. The Community Association shall have all of the common law and statutory powers of a corporation not for profit, not in conflict with the terms of the Articles of Incorporation, the Amended and Restated Bylaws of Marbella Community Association, Inc. (the "Bylaws"), the Amended and Restated Declaration of Covenants, Conditions & Restrictions of Marbella (the "Declaration") or the Homeowners' Association Act.

(b) Specific Powers. The Community Association shall have all of the powers and duties set forth in the Homeowners' Association Act and Chapter 617, Florida Statutes (the "Florida Not for Profit Corporation Act"). The Community Association shall also have all of the powers and duties set forth in the Declaration and the Bylaws; and all of the powers and duties reasonably necessary to operate the

Community in accordance with the Declaration and the Homeowners' Association Act, including, but not limited to, the following:

- (1) To make, amend and collect annual and special Assessments against Lots or Dwellings within the Community and Lot or Dwelling Owners as Members to defray the common expenses and losses of the Community Association.
- (2) To use the proceeds of Assessments in the exercise of its powers and duties.
- (3) To maintain, repair, alter, improve, replace, administer and operate the Common Area and Community Association Property.
- (4) To purchase insurance upon the Common Area and Community Association Property and insurance for the protection of the Community Association, its Directors, officers and its Members as Lot or Dwelling Owners.
- (5) To reconstruct improvements after casualty and to further improve the Common Area and Community Association Property.
- (6) To make and amend reasonable Rules and Regulations regarding the appearance, occupancy and use of the Lots or Dwellings, Common Area and Community Association Property, and policies and procedures governing the internal affairs and operation of the Community Association and the behavior and conduct of its Directors and Officers.
- (7) To approve or disapprove the transfer, lease, mortgage and ownership of Lots or Dwellings in the Community.
- (8) To enforce by legal means the provisions of the Homeowners' Association Act, the Declaration, the Articles of Incorporation, the Bylaws and any Rules and Regulations promulgated by the Board of Directors.
- (9) To contract for the management, operation, administration and maintenance of the Community Association, the Common Area and Community Association Property and to delegate to such contracting party any powers and duties of the Community Association, except such as are specifically required by the Homeowners' Association Act, the Declaration, these Articles of Incorporation, or the Bylaws to have the approval of the Board of Directors or the membership.
- (10) To employ personnel for reasonable compensation to perform the services required for proper administration and operation of the Community Association, including, but not limited to, management of the Community Association and administration of a Community Association rental program.
- (11) To enter into agreements acquiring leaseholds, memberships and other possessory or use interests in lands or facilities, whether or not contiguous to the lands of the Community, intended to provide for the enjoyment, recreation or other use benefits of the Members.

(12) To purchase, acquire or take title to Lots or Dwellings, Dwellings or Tracts within the Community for the purpose of selling or leasing same or use by a resident manager, rental agent or other similar person.

(13) To sue and be sued.

(c) Emergency Powers. In the event of an emergency as defined herein, the Board of Directors may exercise the emergency powers described herein, and any other powers authorized by the Homeowners' Association Act or Sections 617.0207 and 617.0303, Florida Statutes. For purposes of this Article 3.1(c) only, an emergency exists during a period of time that the Community, or the immediate geographic area in which the Community is located, is subjected to: a state of emergency declared by civil or law enforcement authorities; a hurricane watch or warning as issued by a governmental authority; a partial or complete evacuation order issued by civil or law enforcement authorities; the declaration of a federal or state "disaster area" status; or catastrophe, whether natural or manmade, which seriously damages, or threatens to seriously damage the physical existence of the Community. During an emergency as defined herein, the Board of Directors may exercise the following emergency powers:

(1) Conduct meetings of the Board of Directors and membership meetings with notice given as is practicable. Such notice may be given in any practicable manner, including, but not limited to, publication, telephone, radio, United States mail, electronic mail, the Internet, public service announcements, and conspicuous posting in the Subdivision or any other means the Board of Directors deems reasonable under the circumstances. Notice of Board of Directors' decisions may be communicated as provided in this Article 3.1(c). The Directors in attendance at such a meeting of the Board of Directors, if more than one (1) Director, shall constitute a quorum.

(2) Cancel and reschedule any membership meeting, committee meeting or meeting of the Board of Directors.

(3) Name as interim assistant Officers persons who are not Directors, which assistant officers shall have the same authority as the executive Officers to whom they are assistants during the state of emergency to accommodate the incapacity or unavailability of any Officer of the Community Association.

(4) Relocate the Community Association's principal address or designate alternative principal addresses.

(5) Enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal and other emergency assistance.

(6) Implement a disaster plan before or immediately following the event for which a state of emergency is declared which may include, but is not limited to, electricity; water, sewer, or security systems; or heating, ventilating and air conditioners.

(7) Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the Board of Directors, determine any portion of the Community unavailable for entry or occupancy by Lot or Dwelling Owners, Tenants, Guests, agents, Occupants, or Invitees to protect the health, safety, or welfare of such persons.

(8) Require the evacuation of the Community in the event of a mandatory evacuation order in the locale in which the Community is located. Should the Owner of any Lot or Dwelling or Tenant, Guest, agent, Occupant, or Invitee fail or refuse to evacuate the Community where the Board of Directors has required evacuation, the Community Association shall be immune from any and all liability or injury to persons or property arising from such failure or refusal.

(9) Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the Board of Directors, determine whether the Community can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the Declaration.

(10) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of mold, mildew or fungus by removing and disposing of wet drywall, insulation, carpet, carpet pad, baseboards, air ducts, cabinetry, any and all personal property or belongings of a resident or Owner, including but not limited to furniture, clothes, mattresses, and all other fixtures on or within the Common Area, Community Association Property or the Lots or Dwellings, even if the Lot or Dwelling Owner is obligated by the Declaration or Florida law to insure or replace those fixtures and to remove personal property from a Lot or Dwelling.

(11) Contract, on behalf of any Lot or Dwelling Owner, for items or services for which Lot or Dwelling Owners are otherwise individually responsible for, but which are necessary to prevent further damage to the Common Area or Community Association Property. In such event, the Lot or Dwelling Owner on whose behalf the Board of Directors has contracted shall be responsible for reimbursing the Community Association for the actual costs of the items or services, and the Community Association may use its assessment and claim of lien authority provided by Section 720.3085, Florida Statutes, and the Declaration to enforce collection of such charges.

(12) Regardless of any provision to the contrary and even if such authority does not specifically appear in the Declaration, the Articles of Incorporation, or the Bylaws, the Board of Directors may levy one or more special Assessments without a vote of the Members.

(13) Without Member approval, borrow money and pledge Community Association assets as collateral to fund emergency repairs and carry out the duties of the Community Association when operating funds are insufficient. This paragraph does not limit the general authority of the Community Association to borrow money, subject to such restrictions as are contained in these Articles of Incorporation, the Declaration, or the Bylaws.

(14) Corporate action taken in good faith to meet the emergency needs of the Community Association or its Members shall bind the Community Association; have the rebuttable presumption of being reasonable and necessary; and may not be used to impose liability on a Director, officer, or employee of the Community Association. An officer, Director, or employee of the Community Association acting in good faith and in accordance with Article 3.1(c) is only liable for willful misconduct.

The special powers authorized above in Article 3.1(c) shall be limited to the time period reasonably necessary to protect the health, safety, and welfare of the Community and the Owners of any Lot or Dwelling

or, Tenant, Guest, Occupant, or Invitee and shall be reasonably necessary to mitigate further damage and make emergency repairs to the Common Area and Community Association Property.

(d) Community Association Property. All funds and the titles of all properties acquired by the Community Association and their proceeds shall be held in trust for the Members in accordance with the provisions of the Declaration, the Articles of Incorporation and the Bylaws.

(e) Limitation on Exercise of Powers. The powers of the Community Association shall be subject to and shall be exercised in accordance with the provisions of the Declaration and the Bylaws.

ARTICLE 4

Members

4.1 Members.

(a) Members. The Members of the Community Association shall consist of all of the record Owners of a Lot or Dwelling in the Community as shown by recordation of a deed or other appropriate instrument in the Official Records of Sarasota County, Florida.

(b) Change of Membership. After receiving written approval of the Board of Directors, in accordance with the Declaration, change of membership in the Community Association shall be established by the recording, in the Official Records of Sarasota County, Florida, an assignment, deed or other appropriate instrument establishing a record interest in a Lot or Dwelling in the Community. The person or persons named on the deed or other instrument thereby automatically becomes a Member of the Community Association and the membership of the immediate past owner is automatically terminated.

(c) Limitation on Transfer of Shares of Assets. The share of a Member in the funds and assets of the Community Association cannot be assigned, hypothecated or transferred in any manner, except as an appurtenance to a Lot or Dwelling.

(d) Vote. The Owner, or Owners collectively, of each Lot or Dwelling shall be entitled to one (1) vote on behalf of each Lot or Dwelling, as a Member of the Community Association. The manner of exercising voting rights shall be determined by the Declaration, the Articles of Incorporation, and the Bylaws.

ARTICLE 5

Board of Directors

5.1 Board of Directors.

(a) Board of Directors. The affairs of the Community Association shall be managed by the Board of Directors, composed as provided in the Bylaws, but in no event consisting of less than three (3) Directors. A Director must fulfill all requirements of eligibility provided in the Bylaws, the Declaration and the Homeowners' Association Act.

(b) Election of Directors. The Directors of the Community Association shall be elected at the annual meeting of Members in the manner determined by the Bylaws and the Homeowners' Association Act. A Director may be removed, and vacancies on the Board of Directors shall be filled, in the manner provided in the Bylaws and the Homeowners' Association Act.

ARTICLE 6
Officers

6.1 Officers.

The affairs of the Community Association shall be administered by the Officers designated in the Bylaws as directed by the Board of Directors. The Officers shall be elected annually by the Board of Directors at its organizational meeting following the annual meeting of the Members and shall serve at the pleasure of the Board of Directors.

6.2 Indemnification of Officers and Directors.

(a) Indemnity. The Community Association shall indemnify any Officer, Director, or committee member 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 or she is or was a Director, Officer, or committee member of the Community Association, against expenses, including reasonable attorney's fees and appellate attorney's fees; judgments; fines; and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit, or proceeding, unless (i) a court of competent jurisdiction finally determines, after all appeals have been exhausted or not pursued by the proposed indemnitee, that he or she did not act in good faith or in a manner he or she reasonably believed to be in or not opposed to the best interest of the Community Association, and, with respect to any criminal action or proceeding, that he or she had reasonable cause to believe his or her conduct was unlawful, and (ii) such court also determines specifically that indemnification should be denied. 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 or she reasonably believed to be in or not opposed to the best interest of the Community Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that such conduct was unlawful. It is the intent of the membership of the Community Association, by the adoption of this provision, to provide the most comprehensive indemnification possible to their Officers, Directors, and committee members as permitted by Florida law.

(b) Defense. To the extent that a Director, Officer, or committee member of the Community Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Article 6.2(a) above, or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses, including attorney's fees and appellate attorney's fees, actually and reasonably incurred by him or her in connection therewith.

(c) Advances. Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Community Association in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of the affected Director, Officer, or committee member subject to the understanding and agreement of such Director, Officer, or committee member to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Community Association as authorized by this Article 6.

(d) Miscellaneous. The indemnification provided by this Article 6 shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, agreement, vote of Members, or otherwise, and shall continue as to a person who has ceased to be a Director, Officer, or

committee member and shall inure to the benefit of the heirs and personal representatives of such person.

(e) Insurance. The Community Association has the power to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, committee member, employee, or agent of the Community Association, or a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him and incurred by him or her in any such capacity, or arising out of his status as such, whether or not the Community Association would have the power to indemnify him or her against such liability under the provisions of this Article 6.

(f) Amendment. Anything to the contrary herein notwithstanding, the provisions of this Article 6 may not be amended without the approval in writing of all persons whose interest would be adversely affected by such amendment.

(g) Delegation. To the extent permitted by law, the powers and duties of the Directors and Officers may be delegated for the purpose of management.

ARTICLE 7

Bylaws

7.1 Bylaws. The Bylaws may be amended in the manner provided in the Bylaws.

ARTICLE 8

Amendments

8.1 Amendments.

(a) Amendments. Amendments to these Articles of Incorporation may be proposed at any time by at least a majority of the Board of Directors or by written petition of seventy-five percent (75%) of the total voting interests of the Community Association. If by petition, the proposed amendments must be submitted to a vote of the Community Association not later than the next annual meeting. Except as otherwise provided by law, these Articles of Incorporation may be amended if the proposed amendment is approved by at least a majority of the eligible Voting Interests of the Community Association present, in person or by proxy, at a membership meeting at which a quorum is established.

(b) Limitation on Amendments. No amendment shall make any changes in the qualification for membership, the voting rights of Members, or any change in Article 2.1(b) or Article 3.1(d) of the Articles of Incorporation without the approval in writing of all Lot or Dwelling Owners and the joinder of all record owners of liens upon the Lots or Dwellings. No amendment shall be made which is in conflict with the Homeowner's Association Act or the Declaration.

(c) Certification. A copy of each amendment shall be filed with the Florida Secretary of State and shall be recorded in the Official Records of Sarasota County, Florida, along with a certificate of amendment executed by the appropriate officers of the Community Association attesting that the amendment has been lawfully adopted.

ARTICLE 9
Miscellaneous

9.1 Term. The term of the Community Association shall be perpetual, unless sooner dissolved according to law.

9.2 Interpretation. Unless defined herein, terms used herein shall have the same meaning as defined in the Declaration or the Homeowners' Association Act. The Board of Directors is responsible for interpreting the provisions of the Declaration, the Bylaws, these Articles of Incorporation, and the Rules and Regulations of the Community Association. The Board of Directors' interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board of Directors is not wholly unreasonable shall conclusively establish the validity of such interpretation.

9.3 Subscriber.

The name and address of the original subscriber of these Articles of Incorporation is:

<u>Name</u>	<u>Address</u>
Bryce Upton	43 Barkley Circle, Suite 101 Ft. Myers, Florida 33907
Gary Johnson	4120 Marseilles Ave. Sarasota, Florida 34233
Robert Cotterman	3665 Bee Ridge Rd., Suite 108 Sarasota, Florida 34233

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SARASOTA FL 34233
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9.4 Registered Office and Agent.

The registered agent and office of the Community Association, until otherwise determined by the Board of Directors, shall be The Law Offices of Kevin T. Wells, P.A., 1800 Second Street, Suite 808, Sarasota, Florida 34236. The Board of Directors is authorized to change its Registered Agent and Office in the manner provided by Florida law.

9.5 Florida Statutes. Any reference to a statute herein, including, but not limited to, the Homeowners' Association Act and the Florida Not For Profit Corporation Act, shall include subsequent amendments and renumbering from time to time.

Prepared by and return to:
Brett M. Sarason, Esq.
Law Offices of Wells | Olah, P.A.
1800 Second Street, Suite 808
Sarasota, Florida 34236
(941) 366-9191 (Telephone)

**AMENDMENTS TO
ARTICLES OF INCORPORATION**

MARBELLA COMMUNITY ASSOCIATION, INC.

We hereby certify that the attached amendments to the Articles of Incorporation of **MARBELLA COMMUNITY ASSOCIATION, INC.** (herein, the "Association") were adopted at the Annual Membership Meeting of the Association held on November 15, 2018, by not less than a majority of the voting interests present which is sufficient pursuant to Article VII of the Articles of Incorporation. The Association further certifies that the amendments were proposed and adopted as required by the governing documents and applicable Florida law.

The Declaration of Covenants, Conditions and Restrictions of **MARBELLA** was originally recorded at Official Records Book 2141, Page 1361 *et seq.* of the Public Records of Sarasota County, Florida.

Dated this 17th day of December, 2018.

Signed, sealed and
delivered in the presence of:

MARBELLA COMMUNITY ASSOCIATION, INC.

Sign: Alex Robinson

By: Ellen Marsey
Ellen Marsey, President

Print: Alexandria Robinson

Sign: Beth Miller

Print: Beth Miller

ATTEST:

Sign: Alex Robinson

By: Elaine Heckart
Elaine Heckart, Secretary

Print: Alexandria Robinson

Sign: Beth Miller

[Corporate Seal]

Print: Beth Miller

STATE OF FLORIDA
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 17 day of December 2018, by Ellen Marsey as President of Marbella Community Association, Inc., a Florida not for profit corporation, on behalf of the corporation. She is personally known to me or has produced _____ as identification.

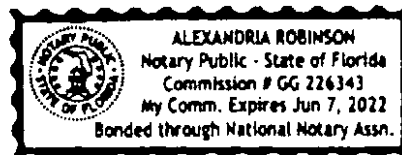
NOTARY PUBLIC

Sign: Alexandria Robinson

Print: Alexandria Robinson

State of Florida at Large (Seal)

My Commission expires:



STATE OF FLORIDA
COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 17 day of December 2018, by Elaine Heckart as Secretary of Marbella Community Association, Inc., a Florida not for profit corporation, on behalf of the corporation. She is personally known to me or has produced _____ as identification.

NOTARY PUBLIC

Sign: Alexandria Robinson

Print: Alexandria Robinson

State of Florida at Large (Seal)

My Commission expires:

