

N33346

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TALLAHASSEE FLORIDA

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5/4/09
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Date: 04-24-09

Amendment Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

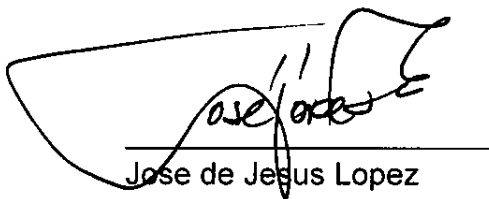
Dear Sirs:

Please find enclosed Articles of Amendment to amend the articles of
Incorporation of a Florida Not for Profit Corporation of Trail Heights Gardens
Condominium Association, Inc.

Also attached a copy of the Summary Final Order Case No 2008-06-4418,
minutes of meeting for election of new board of directors. and money order in the
amount of \$ 35.00 for filing fee.

We thank in advance for your kind attention.

Sincerely,



Jose de Jesus Lopez

COVER LETTER

TO: Amendment Section
Division of Corporations

NAME OF CORPORATION: Trail Heights Gardens Condominium Association, Inc.

DOCUMENT NUMBER: N33346

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

Please return all correspondence concerning this matter to the following:

Jose de Jesus Lopez
(Name of Contact Person)

Lopez Accounting & Tax Service
(Firm/ Company)

1000 SW 104 CT #104
(Address)

Miami, Florida 33174
(City/ State and Zip Code)

For further information concerning this matter, please call:

Jose de Jesus Lopez at (305) 300-4971
(Name of Contact Person) (Area Code & Daytime Telephone Number)

Enclosed is a check for the following amount made payable to the Florida Department of State:

- | | | | |
|---|--|---|--|
| <input checked="" type="checkbox"/> \$35 Filing Fee | <input type="checkbox"/> \$43.75 Filing Fee &
Certificate of Status | <input type="checkbox"/> \$43.75 Filing Fee &
Certified Copy
(Additional copy is
enclosed) | <input type="checkbox"/> \$52.50 Filing Fee
Certificate of Status
Certified Copy
(Additional Copy
is enclosed) |
|---|--|---|--|

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

Street Address
Amendment Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

Articles of Amendment
to
Articles of Incorporation
of

Trail Heights Gardens Condominium Association, Inc.
(Name of Corporation as currently filed with the Florida Dept. of State)

N33346

(Document Number of Corporation (if known))

FILED
09 APR 28 PM 12:09
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to the provisions of section 617.1006, Florida Statutes, this *Florida Not For Profit Corporation* adopts the following amendment(s) to its Articles of Incorporation:

A. If amending name, enter the new name of the corporation:

The new name must be distinguishable and contain the word "corporation" or "incorporated" or the abbreviation "Corp." or "Inc." "Company" or "Co." may not be used in the name.

B. Enter new principal office address, if applicable:
(Principal office address MUST BE A STREET ADDRESS)

C. Enter new mailing address, if applicable:
(Mailing address MAY BE A POST OFFICE BOX)

D. If amending the registered agent and/or registered office address in Florida, enter the name of the new registered agent and/or the new registered office address:

Name of New Registered Agent:

New Registered Office Address:

_____ (Florida street address)

_____, Florida
(City) (Zip Code)

New Registered Agent's Signature, if changing Registered Agent:

I hereby accept the appointment as registered agent. I am familiar with and accept the obligations of the position.

Signature of New Registered Agent, if changing

If amending the Officers and/or Directors, enter the title and name of each officer/director being removed and title, name, and address of each Officer and/or Director being added:

(Attach additional sheets, if necessary)

<u>Title</u>	<u>Name</u>	<u>Address</u>	<u>Type of Action</u>
PD	Grant, Hilda	790 West 20th Street Hialeah, FL 33010	<input type="checkbox"/> Add <input checked="" type="checkbox"/> Remove
VD	Dimori, Francisco	790 West 20th Street Hialeah, FL 33010	<input type="checkbox"/> Add <input checked="" type="checkbox"/> Remove
STD	Villalta, Doris	790 West 20th Street Hialeah, FL 33010	<input type="checkbox"/> Add <input checked="" type="checkbox"/> Remove

E. If amending or adding additional Articles, enter change(s) here:

(attach additional sheets, if necessary). (Be specific)

Additions/Changes to officers and directors:

<u>Title</u>	<u>Name</u>	<u>Address</u>	<u>Type of Action</u>
PD	Azcarate, Carlos	790 West 20th Street Hialeah, FL 33010	Addition
VD	Rodriguez Raul	790 West 20th Street Hialeah, FL 33010	Change
SD	Serrano Isidra	790 West 20th Street Hialeah, FL 33010	Change
TD	Estrada Isabel	790 West 20th Street Hialeah, FL 33010	Addition
D	Castro Justo	790 West 20th Street Hialeah, FL 33010	Addition

SEE ATTACHED EXHIBIT " A" FOR FINAL LIST OF DIRECTORS/OFFICERS

EXHIBIT "A"

<u>Director President:</u>	<u>Carlos Azcarate</u>
<u>Director/Vice President :</u>	<u>Raul Rodriguez</u>
<u>Director/ Secretary:</u>	<u>Isidra Serrano</u>
<u>Director/ Treasurer:</u>	<u>Isabel Estrada</u>
<u>Director:</u>	<u>Justo Castro</u>

The date of each amendment(s) adoption: April 23, 2009

Effective date if applicable: April 23, 2009
(no more than 90 days after amendment file date)

Adoption of Amendment(s) (CHECK ONE)

- ☒ The amendment(s) was/were adopted by the members and the number of votes cast for the amendment(s) was/were sufficient for approval.
- ☐ There are no members or members entitled to vote on the amendment(s). The amendment(s) was/were adopted by the board of directors.

Dated April 23, 2009

Signature



(By the chairman or vice chairman of the board, president or other officer-if directors have not been selected, by an incorporator – if in the hands of a receiver, trustee, or other court appointed fiduciary by that fiduciary)

Carlos Azcarate

(Typed or printed name of person signing)

President

(Title of person signing)

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF FLORIDA CONDOMINIUMS, TIMESHARES AND MOBILE HOMES

IN RE: PETITION FOR ARBITRATION

Trail Heights Gardens Condominium
Association, Inc.,

Petitioner,

v.

Case No. 2008-06-4418

Unit Owners of Trail Heights
Gardens Condominium,

Respondent.

Filed with
Arbitration Section

APR 10 2009

SUMMARY FINAL ORDER

Statement of Issue

Div. of FL Condos, Timeshares & MH
Dept. of Business & Professional Reg.

The issue in this case is whether the Association properly determined not to certify the recall.

Procedural History

On November 24, 2008, Trail Heights Gardens Condominium Association, Inc. (Association) filed a petition for recall arbitration. On December 31, 2008, Respondent filed an Answer to the petition.

Findings of Fact

1. Respondent seeks the recall of three members of the board of directors, Hilda Grant, Francisco Dimori and Doris Villalta. The Association's board of directors is comprised of five (5) members.

2. The Association consists of 135 voting interests, therefore 68 votes are necessary to recall a director.

3. On November 10, 2008, the Association was served with 76 recall ballots.

4. As reflected in its meeting minutes, the board held a meeting on November 17, 2008, at which time it decided not to certify the recall. In their entirety, the minutes state as follows:

The [sic] Raul Rodriguez acknowledged quorum with the following board members present: Hilda Grant, Francisco Dimori, Iridra Serrano and Raul Rodriguez.

A meeting was conducted by the Owners of THG Condo Units with the purpose of reviewing some recall petitions collected by Mr. Raul Rodriguez to recall Hilda Grant, Francisco Dimori and Doris Villalta. 76 petitions were submitted. The President submitted the 12 withdrawals collected by the board.

The association's attorney, Reinaldo Castellanos, conducted the counting and inspection of the petitions and withdrawals. All of the petitions were considered valid, but two of the withdrawals were rejected.

The recall was not certified.

Hilda Grant, President

Conclusions of Law

The arbitrator has jurisdiction of the parties and the subject matter of this dispute. §§ 718.112(2)(j) and 718.1255, Fla. Stat. Section 718.112(2)(j), Fla. Stat., provides that any member of the board of administration (board) may be recalled and removed from office with or without cause by vote or agreement in writing by a majority of all voting interests. This final order is entered pursuant to administrative rule which provides, "At any time after the filing of the petition, if no disputed issues of material fact exist, the arbitrator shall summarily enter a final order denying relief and certifying the recall if the arbitrator finds that no preliminary basis for relief has been demonstrated in the petition." Fla. Admin. Code R. 61B-50.119(2).

In pertinent part, the relevant statute provides as follows:

2. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. At the meeting, the board shall either certify the written agreement to recall a member or members of the board, . . . or proceed as described in subparagraph 3.

3. If the board determines not to certify the written agreement to recall a member or members of the board

§ 718.112(2)(j), Fla. Stat. The board meeting minutes must include the following

The minutes of the board meeting at which the board determines whether to certify the recall are an official record of the association and shall record the following information:

- (a) The date and time the board meeting is called to order and adjourned;
- (b) Whether the recall is certified by the board;
- (c) The manner in which any vacancy on the board occurring as a result of recall will be filled, if the recall is certified; and,
- (d) If the recall was not certified, the specific reasons it was not certified.

Fla. Admin. Code R. 61B-23.008(4). The minutes of recall board meeting show the Association's attorney did the inspection and counting of the recall ballots and the rescissions. The minutes do not reflect an actual vote of the board members not to certify the recall; there is simply a statement that the recall was not certified.

The board may have attorneys or board members review all of the ballots before the meeting and determine whether they believe that any of the ballots should be rejected and the reasons for that rejection. The attorneys or board members may present their findings to the board, and the board may chose to accept all or some of their specific findings and may even attach to the minutes those findings that have been approved by the board. But, the board may not abdicate its responsibility to make the decision to accept or reject the recall agreement. It is the board that must decide whether it will accept or reject a specific ballot or vote, and it is the board that must supply the reason for the rejection. Those decisions of the board must be reflected in the minutes.

Westland Gardens Condo. Ass'n, Inc. v. Unit Owners Voting for Recall, Arb. Case No. 2008-03-8877, Summary Final Order Certifying the Recall (Aug. 7, 2008). In order to

comply with the rule, a board must actually vote not to certify a recall, and the vote must be reflected in the minutes. In the case at hand, the minutes do not reflect a board vote *not to certify the recall and the results of the vote.*¹ Therefore, the recall can be certified on this ground alone, but other grounds are noted below.

Attached as an exhibit to the petition are 12 documents which appear to be a form rescission in English and Spanish with the heading in English "Withdrawal of Recall Petition." Each of the 12 form rescissions states that the person signing the document is withdrawing his or her recall "petition." Each person signing the rescissions dated it November 10, 2008 which is the same date as the recall board meeting. In order for a rescission to be effective, the rescission must have occurred before service of the recall agreement on the board. Fla. Admin. Code R. 61B-23.0028(5)(a). It is unclear when the rescissions were received by the board, however, this need not be determined in order to decide this case.

The minutes reflect that "The President submitted the 12 withdrawals collected by the board." If the board decides not to certify the recall, it must give the specific reasons it was not certified.

To provide the specificity required, the board at its meeting and in its minutes, must either list the unit identification for each unit subject to an objection, the number of units subject to each objection, or otherwise satisfy the arbitrator that the specific objections contained in the petition for arbitration fairly reflect the basis of the board's decision.

The Villages of Kings Creek Condo. Ass'n, Inc. v. Unit Owners Voting for Recall, Arb.

Case No. 99-1919 (Nov. 1, 1999). The minutes reflect that for 12 units, a rescission of

¹ In this case, the vote is crucial. The minutes reflect only four of the five board members were present at the recall meeting, two of whom were the subject of the recall. The third board member subject to recall apparently did not attend the meeting. A tie vote of the board members actually present not to certify the recall would result in the defeat of a motion not to certify the recall.

the recall ballot was received. In the instant case, this is sufficient specificity, but the better practice would be to list in the recall board meeting minutes the unit identification of each ballot the board is rejecting because it was rescinded.

In any event, not all of the rescissions are valid. According to the minutes, the board rejected two of the rescissions, but did not specify which rescissions were rejected. The petition shows the board rejected the rescission for unit B-204 and for unit C-204, the former because it was not signed by the unit owner and the latter because the name of the person signing the rescission was not the same as the person signing the ballot.

In the Answer, Respondent alleges that the signature on the rescission for units B-206, C-101 and C-109 was not that of the person who signed the recall ballot. From a comparison of the signature on the ballot and the signature on the rescission, it is clear that the person who signed the ballot is not the person who signed the rescission.

It is clear from the minutes, that the board considered all of the ballots valid and the only reason the board was not certifying the recall was because there were 12 rescissions. At least four of the 12 rescissions proffered by the Association are invalid, therefore the remainder of the rescissions need not be considered. The requisite 68 votes to recall Hilda Grant, Francisco Dimori and Doris Villalta have been attained.

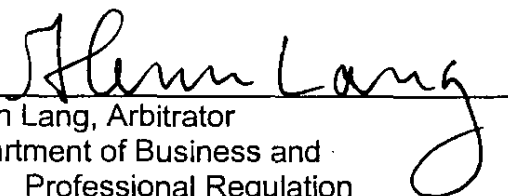
Based on the foregoing, it is ORDERED:

1. The recall of board members Hilda Grant, Francisco Dimori and Doris Villalta is hereby CERTIFIED and they are REMOVED as directors effective as of the date of the mailing of this order. Within five (5) full business days from the effective date of this

recall, Hilda Grant, Francisco Dimori and Doris Villalta shall deliver any and all records of the Association in their possession to the new board of directors.

2. As the majority of the five member board has been recalled, the replacement candidates, Carlos H. Azcarate, Justo Castro and Isabel Estrada, shall take office effective upon the mailing of this order for the unexpired terms of the recalled directors.

DONE AND ORDERED this 10th day of April, 2009, at Tallahassee, Leon County, Florida.

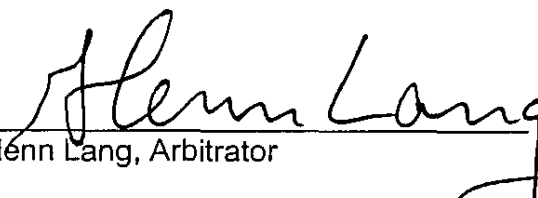

Glenn Lang, Arbitrator
Department of Business and
Professional Regulation
Arbitration Section
1940 North Monroe Street
Tallahassee, Florida 32399-1029

Certificate of Service

I hereby certify that a true and correct copy of the foregoing final order has been sent by U.S. Mail to the following persons on this 10th day of April, 2009:

Reinaldo Castellanos, Esq.
Reinaldo Castellanos, P.A.
9960 Bird Road
Miami, FL 33165

Jose De Jesus Lopez
Unit Owner Representative
1000 SW 104th Court, Unit 104
Miami, FL 33174


Glenn Lang, Arbitrator

Minutes of Meeting

At 8:00 pm of April 22, 2009 the meeting is installed, in 1000 SW 104 CT, Miami, FL 33174.

The assistants are: Carlos Azcarate, Raul Rodriguez, Isidra Serrano, Isabel Estrada and Mr. Jose de Jesus Lopez, unit owners representative in arbitration and recall.

Reason for the meeting:

1. Report the outcome of the request for arbitration, Case No. 2008-06-4418.
2. Election of new board of directors.

Mr. Lopez announces that three (3) directors were removed from office and his replacement are the following candidates: Carlos Azcarate, Justo Castro and Isabel Estrada. Two (2) of the remaining board were retained in the board. They are: Raul Rodriguez y Isidra Serrano.

Besides Mr. Lopez tells us that we must make the choice between five (5) current members of the board, and allocate the positions

Mr Raul Rodriguez Prepare ballots and each member of the board chooses its candidates for the positions of President, Vice-president, secretary, treasurer and director.

The result is as follows:

Carlos Azcarate.....	President
Raul Rodriguez	Vice President
Isidra Serrano	Secretary
Isabel Estrada	Treasurer
Justo Castro	Director

The section was closed at 9:30 PM



Signed by: Carlos Azcarate, President