

N97000005526

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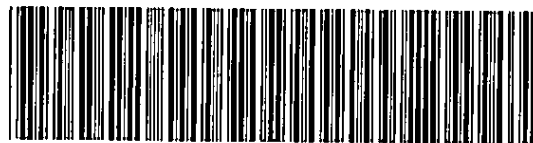
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Restated

AUG 12 2020

I ALBRITTON

COVER LETTER

TO: Amendment Section
Division of Corporations

NAME OF CORPORATION: The Enclave Neighborhood Homeowners Association, Inc.

DOCUMENT NUMBER: N97000005526

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

Please return all correspondence concerning this matter to the following:

Diane M. Simons

(Name of Contact Person)

Simons Law Group, PLLC

(Firm/ Company)

1705 Colonial Blvd., Suite C3

(Address)

Fort Myers, FL 33907

(City/ State and Zip Code)

dsimons@simonslawgroup.com

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Heather Paoletta, Paralegal

844

800-3649

(Name of Contact Person)

at

(Area Code)

(Daytime Telephone Number)

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

- ☐ \$35 Filing Fee ☐ \$43.75 Filing Fee & Certificate of Status ☒ \$43.75 Filing Fee & Certified Copy (Additional copy is enclosed) ☐ \$52.50 Filing Fee Certificate of Status Certified Copy (Additional Copy is Enclosed)

Payment sent with June 12, 2020 request to file.

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

Street Address
Amendment Section
Division of Corporations
The Centre of Tallahassee
2415 N. Monroe Street, Suite 810
Tallahassee, FL 32303



FLORIDA DEPARTMENT OF STATE
Division of Corporations

2020 / 7 / 27 2:06

July 27, 2020

SIMONS LAW GROUP, PLLC
1705 COLONIAL BLVD
STE. C3
FORT MYERS, FL 33907

SUBJECT: THE ENCLAVE NEIGHBORHOOD HOMEOWNERS ASSOCIATION,
INC.
Ref. Number: N97000005526

We have received your document for THE ENCLAVE NEIGHBORHOOD HOMEOWNERS ASSOCIATION, INC. and your check(s) totaling \$43.75. However, the enclosed document has not been filed and is being returned for the following correction(s):

You failed to make the correction(s) requested in our previous letter.

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 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.

Irene Albritton
Regulatory Specialist II

Letter Number: 520A00014026

EXHIBIT A

NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE ARTICLES OF INCORPORATION.
FOR PRESENT TEXT SEE EXISTING ARTICLES OF INCORPORATION.

**SECOND AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
THE ENCLAVE NEIGHBORHOOD HOMEOWNERS ASSOCIATION, INC.**

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FILED

EXHIBIT A

Pursuant to Section 617.1007, Florida Statutes, these Articles of Incorporation of The Enclave Neighborhood Homeowners Association, Inc., a Florida corporation not for profit, which was originally incorporated under the same name on September 30, 1997, are hereby amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 617.1002, Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Second Amended and Restated Articles other than the inclusion of amendments, adopted pursuant to Section 617.1002, Florida Statutes, and the omission of matters of historical interest. The Second Amended and Restated Articles of Incorporation of The Enclave Neighborhood Homeowners Association, Inc., shall henceforth be as follows:

ARTICLE I

NAME: The name of the corporation is The Enclave Neighborhood Homeowners Association, Inc., sometimes hereinafter referred to as the "Association".

ARTICLE II

PRINCIPAL OFFICE: The principal office of the corporation shall be c/o Simons Law Group, 1705 Colonial Blvd. C-3 Fort Myers, Florida 33907, unless otherwise changed by the Board of Directors.

ARTICLE III

PURPOSE AND POWERS: This Association will not permit pecuniary gain or profit nor distribution of its income to its members, officers or Directors. It is a nonprofit corporation formed for the purpose of establishing a corporate residential community homeowners' association which, subject to a Declaration of Neighborhood Covenants, Conditions, and Restrictions for The Enclave, originally recorded in the Public Records of Lee County, Florida, at O.R. Book 2912, at Page 1738, *et seq.*, and as amended, has the powers described herein. The Association shall have all of the common law and statutory powers of a Florida corporation not for profit consistent with these Articles, the Bylaws of the corporation, and with said Declaration and shall have all of the powers and authority reasonably necessary or appropriate for the operation and regulation of a residential community, subject to said recorded Declaration, as it may from time to time be amended, including but not limited to the power:

- (A) to fix, levy, collect and enforce payment by any lawful means all charges, assessments, or liens pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all license fees, taxes or governmental charges levied or imposed against the property or the corporation;
- (B) to make, amend and enforce reasonable rules and regulations governing the use of the Common Areas and the operation of the Association;
- (C) to sue and be sued, and to enforce the provisions of the Declaration, the Articles, the Bylaws and the reasonable rules of the Association;

EXHIBIT A

(D) to contract for the management and maintenance of the Common Areas and to delegate any powers and duties of the Association in connection therewith except such as are specifically required by the Declaration to be exercised by the Board of Directors or the membership of the Association;

(E) to employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the properties;

(F) to dedicate, sell or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication, sale or transfer shall be effective unless first approved by two-thirds (2/3rds) of the voting interests, present and voting, in person or by proxy at a duly called meeting of the membership;

(G) to borrow money, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred if first approved by Board;

(H) to maintain, repair, replace and provide insurance for the Common Areas;

(I) to acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, or otherwise dispose of real or personal property in connection with the affairs of the corporation;

(J) to grant, modify or move common areas and/or easements; and

(K) to exercise any and all powers, rights and privileges which a corporation organized under Chapters 617 and 720 of Florida Statutes may now or hereafter have or exercise; subject always to the Declaration as amended from time to time.

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 Declaration, these Articles of Incorporation and the Bylaws.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS: Membership and Voting Rights shall be as set forth in the Bylaws of the Association.

ARTICLE V

TERM; DISSOLUTION: The term of the Association shall be perpetual. The Association may be dissolved with the consent given in writing and signed by not less than two-thirds (2/3rds) of total voting interests of the Association. Upon dissolution of the Association, other than incident to a merger or consolidation, its assets, both real and personal, shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was formed. In the event there is a refusal to accept such dedication, then such assets shall be granted, conveyed

EXHIBIT A

and/or assigned to any non-profit corporation, association, trust or other organization which is devoted to purposes similar to those of this Association.

ARTICLE VI

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

ARTICLE VII

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

(A) **Proposal:** Amendments to these Articles shall be proposed by a majority of the Board or upon petition of one-fourth (1/4th) of the voting interests, and shall be submitted to a vote of the members not later than the next annual meeting.

(B) **Vote Required:** Except as otherwise required by Florida law or as provided elsewhere in these Articles, these Articles of Incorporation may be amended if the proposed amendment is approved by a majority of the total voting interests (i.e., 12 unless the total voting interests have been reduced as provided in section 2.3 of the Bylaws), at a duly called meeting of the members of the Association.

(C) **Effective Date:** An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Lee County, Florida with the same formalities as are required in the Declaration for recording amendments to the Declaration.

ARTICLE VIII

DIRECTORS AND OFFICERS:

(A) The affairs of the Association will 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. Directors must be members of the Association.

(B) Directors of the Association 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 by the Board of Directors at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board.

EXHIBIT A

ARTICLE IX

INDEMNIFICATION.

(A) Indemnity. The 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/she is or was a Director, officer, or committee member of the Association, against expenses (including attorney's fees and appellate attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him/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/she did not act in good faith or in a manner he/she 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/she had reasonable cause to believe his/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, of itself, create a presumption that the person did not act in good faith and in a manner which he/she reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his/her conduct was unlawful. It is the intent of the membership of the 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 Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Section (A) above, or in defense of any claim, issue, or matter therein, he/she shall be indemnified against expenses (including attorney fees and appellate attorney fees) actually and reasonably incurred by him/her in connection therewith.

(C) Advances. 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 affected Director, officer, or committee member to repay such amount if it shall ultimately be determined that he/she is not entitled to be indemnified by the Association as authorized by this Article IX.

(D) Miscellaneous. The indemnification provided by this Article IX 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 Association shall have 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 Association, or a Director, officer, employee, or agent of another

EXHIBIT A

corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against him/her and incurred by him/her in any such capacity, or arising out of/her status as such, whether or not the Association would have the power to indemnify him/her against such liability under the provisions of this Article.

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

RETURN TO
DIANE M. SIMONS, ESQ
ATTORNEY AT LAW
SIMONS LAW GROUP, PLLC
1705 COLONIAL BLVD., SUITE C3
FORT MYERS, FL 33907
Tel: 1-844-800-3649

CERTIFICATE OF AMENDMENT

THE UNDERSIGNED being the President and Treasurer for THE ENCLAVE NEIGHBORHOOD HOMEOWNERS ASSOCIATION, INC., a Florida non-profit corporation, does hereby certify that the attached Second Amended and Restated Declaration of Neighborhood Covenants, Conditions and Restrictions for The Enclave; Second Amended and Restated Articles of Incorporation of The Enclave Neighborhood Homeowners Association, Inc.; Second Amended and Restated Bylaws of The Enclave Neighborhood Homeowners Association, Inc.; MRTA Preservation, and all Exhibits thereto, were duly approved, adopted and enacted by the affirmative vote of the proper percentage of owners at a meeting called for that purpose at which a quorum was present held on the 2nd day of June, 2020. The Original Declaration, Articles of Incorporation and Bylaws for the Association, were recorded at Official Records Book 2912, Page 1738, *et seq.* of the Public Records of Lee County, Florida.

Dated this 3rd day of June, 2020.

WITNESSES:

(Sign) Mary Zinger

(Print) Mary Zinger

(Sign) Heather M. Paoletta

(Print) Heather Paoletta

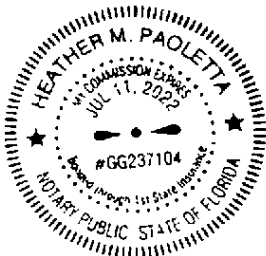
**THE ENCLAVE NEIGHBORHOOD
HOMEOWNERS ASSOCIATION, INC.**

BY: Miller McDonald

Miller McDonald
President of the Association

**STATE OF FLORIDA)
COUNTY OF LEE)**

The foregoing instrument was acknowledged before me this 3rd day of June, 2020 by Miller McDonald, as President of The Enclave Neighborhood Homeowners Association, Inc., a Florida non-profit corporation on behalf of said corporation. Said person is personally known to me or has produced FLDL as identification and did take an oath.



NOTARY PUBLIC:

Heather M. Paoletta

STATE OF FLORIDA (SEAL)

My Commission Expires:

WITNESSES:

(Sign) Mary Zizzo

(Print) Mary Zizzo

(Sign) Heather M Paoletta

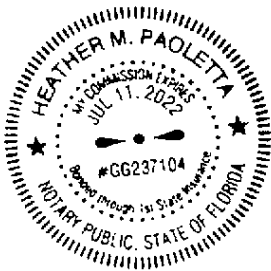
(Print) Heather Paoletta

THE ENCLAVE NEIGHBORHOOD
HOMEOWNERS ASSOCIATION, INC.

BY: Herb Groener
Herb Groener
Treasurer of the Association

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was acknowledged before me this 3rd day of June, 2020 by Herb Groener, as Treasurer of The Enclave Neighborhood Homeowners Association, Inc., on behalf of said corporation. Said person is personally known to me or has produced FLDL as identification and did take an oath.



NOTARY PUBLIC:

Heather M Paoletta
STATE OF FLORIDA (SEAL)
My Commission Expires:

[illegible]

- ☐ 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 02/06/2020

Signature Miller McDonald

(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)

Miller McDonald

(Typed or printed name of person signing)

President

(Title of person signing)