

P18000051079

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP

☐ WAIT

☐ MAIL

(Business Entity Name)

(Document Number)

Certified Copies _____ Certificates of Status _____

Special Instructions to Filing Officer:

Office Use Only



400314510794

06/15/18--01025--004 **35.00

FILED
18 JUN 15 AM 10:39
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

JUN 19 2018
S. YOUNG



Amanda D. Lauer | Associate

Direct: 216.736.7231 | adl@kjk.com

One Cleveland Center | 1375 East Ninth Street
29th Floor | Cleveland, Ohio 44114-1793

Main: 216.696.8700 | Toll-free: 888.696.8700 | Fax: 216.621.6536

VIA FED-EX

June 14, 2018

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

Re: Amendment to Articles of Incorporation for MRAD Holdings, Inc.

Dear Florida SOS Office:

Enclosed please find a Cover Letter and Additional Provisions to Articles of Incorporation of MRAD Holdings, Inc. for filing with the Florida Secretary of State. Also enclosed is a check for the \$35.00 filing fee. Please provide our office with confirmation of the filing.

Please call me if there are any issues or questions.

Sincerely,


Amanda D. Lauer, Esq.

Encl.

COVER LETTER

TO: Amendment Section
Division of Corporations

NAME OF CORPORATION: MRAD HOLDINGS, INC.

DOCUMENT NUMBER: P18000051077

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

Please return all correspondence concerning this matter to the following:

Michael Niederst

Name of Contact Person

MRAD HOLDINGS, INC.

Firm/ Company

151 Southhall Lane, Suite 150

Address

Maitland, Florida 32751

City/ State and Zip Code

mniederst@nmresidential.com

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

For further information concerning this matter, please call:

Michael Niederst

Name of Contact Person

at (407)

901-8800 x 24

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)

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

FILED
18 JUN 15 AM 10:39
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ADDITIONAL PROVISIONS TO
ARTICLES OF INCORPORATION
OF
MRAD HOLDINGS, INC.

MRAD Holdings, Inc. (the "Company") hereby amends its Articles of Incorporation filed with the Florida Secretary of State on June 5, 2018 as P18000051077 (the "Articles") by restating and/or adding the following articles:

ARTICLE III:

3.01 Purpose.

The purpose to be conducted or promoted by Corporation is to engage only in the following activities:

- (a) to act as the managing member of Borrower; and
- (b) to do any and all things necessary or incidental to accomplish the foregoing business purpose.

3.02. Single Purpose Entity. Notwithstanding anything to the contrary contained in these Articles, for as long as any indebtedness remains outstanding under the Loan, the Corporation:

- (i) was and will be organized solely for the purpose of acting as the managing member of Borrower;
- (ii) has not engaged and will not engage in any business unrelated to acting as managing member of Borrower;
- (iii) has not had and will not have any assets other than those related to its membership interest in Borrower;
- (iv) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale (except as expressly permitted by the Loan Agreement), transfer of corporate interests or the like, or amendment of its certificate of formation or these Articles;
- (v) intentionally omitted;
- (vi) has and will have at least one (1) Independent Director, and has not caused or allowed and will not cause or allow the board of directors of Corporation to take any action requiring the unanimous affirmative vote of 100% of the members of its board of directors unless all of the directors and the Independent Director shall have participated in such vote, and no Independent Director may be removed or replaced without Cause and unless Corporation provides Lender with not less than three (3)

Business Days' prior written notice of (a) any proposed removal of an Independent Director, together with a statement as to the reasons for such removal, and (b) the identity of the proposed replacement Independent Director, together with a certification that such replacement satisfies the requirements set forth herein for an Independent Director;

(vii) intentionally omitted;

(viii) intentionally omitted;

(ix) has not, and without the unanimous consent of all of its directors (including the Independent Director) will not, with respect to itself or Borrower or any other entity in which it has a direct or indirect legal or beneficial ownership interest (A) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such entity or for all or any portion of such entity's properties, (C) make any assignment for the benefit of such entity's creditors or (D) take any action that might cause such entity to become insolvent;

(x) has remained and intends to remain solvent and has maintained and intends to maintain adequate capital in light of its contemplated business operations;

(xi) has not failed and will not fail to correct any known misunderstanding regarding the separate identity of the Corporation;

(xii) has maintained and will maintain its accounts, books and records separate from any other Person and will file its own tax returns;

(xiii) has maintained and will maintain its books, records, resolutions and agreements as official records;

(xiv) has not commingled and will not commingle its funds or assets with those of any other Person;

(xv) has held and will hold its assets in its own name;

(xvi) has conducted and will conduct its business in its name,

(xvii) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person;

(xviii) has paid and will pay its own liabilities, including the salaries of its own employees, out of its own funds and assets;

(xix) has observed and will observe all corporate formalities;

(xx) has maintained and will maintain an arm's-length relationship with its Affiliates;

(xxi) has and will have no indebtedness other than unsecured trade payables in the ordinary course of business relating to acting as managing member of Borrower which (1) do not exceed, at any time, \$10,000 and (2) are paid within thirty (30) days of the date incurred;

(xxii) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except for the Loan;

(xxiii) has not and will not acquire obligations or securities of its shareholders;

(xxiv) has allocated and will allocate fairly and reasonably shared expenses, including shared office space, and uses separate stationery, invoices and checks;

(xxv) except in connection with the Loan, has not pledged and will not pledge its assets for the benefit of any other Person;

(xxvi) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;

(xxvii) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xxviii) has not made and will not make loans to any Person;

(xxix) has not identified and will not identify its shareholders or any Affiliate of its shareholders, as a division or part of it;

(xxx) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;

(xxxi) has and will have no obligation to indemnify its officers, or shareholders, or has such an obligation that is fully subordinated to the Debt and will not constitute a claim against it if cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;

(xxxii) Intentionally Omitted; and

(xxxiii) will consider the interests of its creditors in connection with all corporate actions.

3.03. Defined Terms. Capitalized terms used in this Article Three but not defined in these Articles shall have the meanings ascribed to them in the Loan Agreement.

3.04. Third Party Beneficiary. Lender is an intended third-party beneficiary of the foregoing "special purpose" provisions.

3.05. Standards Governing Actions. To the fullest extent permitted by applicable law, the shareholders and officers shall at all times take into account the interests of the Corporation's creditors as well as the interests of its shareholders with all matters subject to the consideration or vote of the shareholders.

3.06. Indemnification. Any obligations of the Corporation to indemnify its shareholders and officers are hereby fully subordinated to its obligations respecting the Property and shall not constitute a claim against the Corporation in the event that cash flow in excess of amounts required to pay holders of any debt pertaining to the Property is insufficient to pay such obligations.

3.07. Priority of Distributions. The Corporation's assets shall be utilized at all times to satisfy fully any and all of the Corporation's obligations and liabilities to Lender in accordance with the Loan Documents prior to paying or distributing any of such proceeds to satisfy other obligations or liabilities of the Corporation.

3.08. Conflicting Provisions. To the extent this Article Three conflicts with any other provisions of these Articles or any other organizational or formation document of the Corporation, this Article Three shall control.

3.09. Definitions.

"**Affiliate**" means as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

"**Borrower**" means MRAD Phase I, LLC, a Florida limited liability company.

"**Control**" means with respect to any Person, either (i) ownership directly or indirectly of forty-nine percent (49%) or more of all equity interests in such Person or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise, and the terms Controlled, Controlling and Common Control shall have correlative meanings.

"**Independent Director**" means a natural person selected by Corporation (a) with prior experience as an independent director, independent manager or independent member, (b) with at least three (3) years of employment experience, (c) who is provided by a Nationally Recognized Service Company, (d) who is duly appointed as an Independent Director and is not,

will not be while serving as Independent Director and shall not have been at any time during the preceding five (5) years, any of the following:

(i) a stockholder, director (other than as an Independent Director), officer, employee, partner, attorney or counsel of Corporation, any Affiliate of Corporation or any direct or indirect parent of Corporation;

(ii) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with Corporation or any Affiliate of Corporation;

(iii) a Person or other entity Controlling or under Common Control with any such stockholder, partner, customer, supplier or other Person; or

(iv) a member of the immediate family of any such stockholder, director, officer, employee, partner, customer, supplier or other Person.

A natural person who otherwise satisfies the foregoing definition and satisfies subparagraph (i) by reason of being the Independent Director of a "special purpose entity" affiliated with Corporation shall be qualified to serve as an Independent Director of Corporation, provided that the fees that such individual earns from serving as Independent Director of affiliates of Corporation in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year.

A natural person who satisfies the foregoing definition other than clause (ii) shall not be disqualified from serving as an Independent Director of Corporation if such individual is an independent director or special manager provided by a Nationally Recognized Service Company that provides professional independent directors and special managers and also provides other corporate services in the ordinary course of its business.

"Lender" means PFP Holding Corporation V, LLC, a Delaware limited liability Corporation, or an affiliate thereof, together with its successors and assigns.

"Loan" means that certain loan in the original principal amount of approximately \$41,000,000 from Lender to the Borrower.

"Loan Agreement" means that certain Loan Agreement between Lender and Borrower.

"Nationally Recognized Service Company" means any of CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company or such other nationally recognized company that provides independent director, independent manager or independent member services and that is reasonably satisfactory to Lender, in each case that is not an Affiliate of Borrower and that provides professional independent directors and other corporate services in the ordinary course of its business.

"Person": any individual, corporation, partnership, limited liability Corporation, joint venture, estate, trust, unincorporated association, any other person or entity,

and any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

June 5, 2018

The date of each amendment(s) adoption: _____, if other than the date this document was signed.

Effective date if applicable: _____
(no more than 90 days after amendment file date)

Note: If the date inserted in this block does not meet the applicable statutory filing requirements, this date will not be listed as the document's effective date on the Department of State's records.

Adoption of Amendment(s) (CHECK ONE)

- ☐ The amendment(s) was/were adopted by the shareholders. The number of votes cast for the amendment(s) by the shareholders was/were sufficient for approval.
- ☐ The amendment(s) was/were approved by the shareholders through voting groups. *The following statement must be separately provided for each voting group entitled to vote separately on the amendment(s):*

"The number of votes cast for the amendment(s) was/were sufficient for approval
by _____."
(voting group)

- ☐ The amendment(s) was/were adopted by the board of directors without shareholder action and shareholder action was not required.
- ☒ The amendment(s) was/were adopted by the incorporators without shareholder action and shareholder action was not required.

June 13, 2018

Dated _____

Signature _____

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

Michael D. Niederst

(Typed or printed name of person signing)

President and Authorized Signatory

(Title of person signing)