

P21000077542

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

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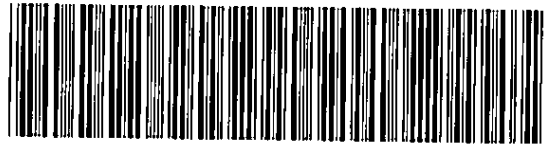
(Business Entity Name)

(Document Number)

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2021 OCT 19 AM 9:37

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2021 OCT 19 PM 4:06

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TALLAHASSEE, FLORIDA

Amend

OCT 20 2021

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INC AMEND

1. **ENCLAVE MANAGER, INC**

(CORPORATE NAME AND DOCUMENT #)

2.

(CORPORATE NAME AND DOCUMENT #)

3.

(CORPORATE NAME AND DOCUMENT #)

4.

(CORPORATE NAME AND DOCUMENT #)

5.

(CORPORATE NAME AND DOCUMENT #)

6.

(CORPORATE NAME AND DOCUMENT #)

**SPECIAL
INSTRUCTIONS:**

Articles of Amendment
to
Articles of Incorporation
of

2021 OCT 19 PM 9:37

Enclave Manager, Inc.

(Name of Corporation as currently filed with the Florida Dept. of State)

P21000077542

(Document Number of Corporation (if known))

Pursuant to the provisions of section 607.1006, Florida Statutes, this *Florida 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," "company," or "incorporated" or the abbreviation "Corp.," "Inc.," or Co.," or the designation "Corp.," "Inc.," or "Co.". A professional corporation name must contain the word "chartered," "professional association," or the abbreviation "P.A."

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

(Florida street address)

New Registered Office Address:

(City)

Florida

(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

Check if applicable

☐ The amendment(s) is/are being filed pursuant to s. 607.0120 (11) (e), F.S.

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)

Please note the officer/director title by the first letter of the office title:

P = President; V = Vice President; T = Treasurer; S = Secretary; D = Director; TR = Trustee; C = Chairman or Clerk; CEO = Chief Executive Officer; CFO = Chief Financial Officer. If an officer/director holds more than one title, list the first letter of each office held. President, Treasurer, Director would be PTD.

Changes should be noted in the following manner. Currently John Doe is listed as the PST and Mike Jones is listed as the V. There is a change, Mike Jones leaves the corporation, Sally Smith is named the V and S. These should be noted as John Doe, PT as a Change, Mike Jones, V as Remove, and Sally Smith, SV as an Add.

Example:

X Change PT John Doe

X Remove V Mike Jones

X Add SV Sally Smith

Type of Action (Check One)	Title	Name	Address
1) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____
2) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____
3) <input type="checkbox"/> Change	_____	_____	_____
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4) <input type="checkbox"/> Change	_____	_____	_____
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5) <input type="checkbox"/> Change	_____	_____	_____
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6) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____

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

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

Article III is hereby amended by adding the Additional Sheet attached hereto.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

F. If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself:
(if not applicable, indicate N/A)

[illegible]

ADDITIONAL SHEET

1. The following provisions shall be added to the end of Article III:

Notwithstanding the foregoing, the corporation shall be considered a Single Purpose Entity. For purposes hereof, a "Single Purpose Entity" means a corporation which at all times since its formation and at all times thereafter:

- (a) was formed under the laws of the State of Florida solely for the purpose of acquiring and holding an ownership interest in Enclave Residences LLC;
- (b) does not engage in any business unrelated to its ownership interest in Enclave Residences LLC;
- (c) does not own any assets other than those related to its ownership interest in Enclave Residences LLC;
- (d) does not have any debt other than reasonable and customary administrative expenses and state franchise taxes;
- (e) maintains books, accounts, records, financial statements, stationery, invoices and checks that are separate and apart from those of any other Person (except that corporation's financial position, assets, results of operations and cash flows may be included in the consolidated financial statements of an affiliate of the corporation in accordance with applicable accounting principles, provided that (i) any such consolidated financial statements do not suggest in any way that the corporation's assets are available to satisfy the claims of its affiliate's creditors and (ii) such assets shall also be listed on the corporation's own separate balance sheet);
- (f) is subject to and complies with all of the limitations on powers and separateness requirements set forth in the organizational documentation of the corporation as of the effective date hereof;
- (g) holds itself out as being a Person separate and apart from each other Person and not as a division or part of another Person;
- (h) conducts its business in its own name and does not identify itself or any of its affiliates as a division or department of any other Person;
- (i) exercises reasonable efforts to correct any known misunderstanding actually known to it regarding its separate identity, maintains an arm's-length relationship with its affiliates and only enters into a contract or agreement with an affiliate upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arm's length basis with unaffiliated third parties;

- (j) pays its own liabilities out of its own funds, including the salaries of its own employees, if any (provided that the foregoing shall not require the corporation's shareholders to make any additional capital contributions to the corporation) and reasonably allocates any overhead that is shared with an affiliate, including paying for shared office space and services performed by any officer or employee of an affiliate;
- (k) maintains a sufficient number of employees, if any, in light of its contemplated business operations;
- (l) conducts its business so that the assumptions made with respect to it that are contained in any non-consolidation opinion issued in favor of Lender shall at all times be true and correct in all material respects;
- (m) maintains 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;
- (n) observes all applicable entity-level formalities in all material respects;
- (o) does not commingle its assets with those of any other Person, and holds its assets in its own name;
- (p) does not assume, guarantee or become obligated for the debts of any other Person, and does not hold out its credit as being available to satisfy the obligations or securities of others;
- (q) does not acquire obligations or securities of its direct or indirect shareholders;
- (r) does not pledge its assets for the benefit of any other Person and does not make any loans or advances to any other Person;
- (s) maintains adequate capital in light of its contemplated business operations (provided that the foregoing shall not require the corporation's shareholders to make any additional capital contributions to the corporation);
- (t) has two Independent Directors on its board of directors that shall consider only the interests of the Corporation, and that shall not be replaced without Cause and without the corporation giving at least two (2) business days' prior written notice to Lender and the Rating Agencies (except in the case of the death, legal incapacity, or voluntary non-collusive resignation of an Independent Director, in which case no prior notice to Lender or the Rating Agencies shall be required in connection with the replacement of such Independent Director with a new Independent Director that is provided by any of the companies listed in the definition of "Independent Director");

- (u) files its own tax returns separate from those of any other Person, except to the extent it is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable law, and pays any taxes required to be paid under applicable law only from its own funds;
- (v) So long as the Loan is outstanding, the corporation shall not take or consent to any of the following actions without the prior unanimous written consent of the Board including both of its Independent Directors except to the extent expressly permitted in this Agreement:
 - i. the dissolution, liquidation, consolidation, merger or sale of all or substantially all of its assets;
 - ii. the engagement by the corporation in any business other than activities incidental to the acquisition and ownership of its interest in Enclave Residences LLC;
 - iii. the filing, or consent to the filing, of a bankruptcy or insolvency petition, any general assignment for the benefit of creditors or the institution of any other insolvency proceeding, the seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official in respect of the corporation, admitting in writing the corporation's inability to pay its debts generally as they become due, or the taking of any action in furtherance of any of the foregoing; and
 - iv. any amendment or modification of any provision of the corporation's organizational documents relating to qualification as a "Single-Purpose Entity"; and
- (w) has not and will not be the product of, subject of, or otherwise involved in any limited liability company or corporate division, whether pursuant to a plan of division or otherwise.

In the event of a conflict between any of the provisions contained in this Articles III, IX, X, and XI hereof and any other provisions of these Articles and any other governing documents of the Corporation, the provisions of Articles III, IX, X, and XI hereof shall control.

2. The following provisions shall be added as new Article IX:

- (i) Lender is an intended third-party beneficiary of these Articles of Incorporation; and
- (ii) Until the Loan is paid in full, these Articles of Incorporation shall not be amended without the prior written consent of Lender.

3. The following provisions shall be added as new Article X:

- (i) The Corporation will at all times have at two (2) Independent Directors. The initial Independent Directors of the Corporation shall be Michelle A. Dreyer and James L. Grier.
- (ii) All right, power, and authority of the Independent Directors shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in Article III, Subsection (v) above, and the Independent Directors shall otherwise have no authority to bind the corporation. The Independent Directors will not be personally liable to the corporation, its stockholders, or any other person for monetary damages to the fullest extent provided by Florida law. If Florida law is amended after the date of the filing hereof to authorize corporate action further eliminating or limiting the personal liability of the Independent Directors, then the liability of the Independent Directors of the corporation will be eliminated or limited to the fullest extent permitted by the Florida law, as so amended. No repeal or modification of this By-Law will apply to or have any effect on the liability or alleged liability of any Independent Director of the corporation for or with respect to any acts or omissions of such Independent Directors occurring prior to such repeal or modification. The corporation shall indemnify any officer, director (including the Independent Directors), and any former officer or director (including the Independent Directors) to the fullest extent permitted by Florida law.

4. The following provisions shall be added as new Article XI:

Capitalized terms shall have the following meanings:

- (i) "Cause" means, with respect to an Independent Director, (i) acts or omissions by such Independent Director that constitute systematic and persistent or willful disregard of, or bad faith or gross negligence with respect to, such Independent Director's duties, (ii) such Independent Director has been indicted or convicted for any crime or crimes of moral turpitude or dishonesty, (iii) such Independent Director is unable to perform his or her duties as an Independent Director due to death, disability or incapacity, (iv) such Independent Director no longer satisfies the requirements set forth in the definition of "Independent Director", (v) the fees charged for the services of such Independent Director are materially in excess of the fees charged by the other providers of Independent Directors listed in the definition of "Independent Director" or (vi) any other reason for which the prior written consent of Lender shall have been obtained.
- (ii) "Certificates" means, collectively, any senior and/or subordinate notes, debentures or pass-through certificates, or other evidence of indebtedness, or debt or equity securities, or any combination of the foregoing, representing a direct or beneficial interest, in whole or in part, in the Loan.
- (iii) "Independent Director" means an individual who is provided by CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust

Company, Stewart Management Company, or Lord Securities Corporation, in each case that is not an affiliate of the Corporation and that provides professional independent directors or managers and other corporate services in the ordinary course of its business, and which individual is duly appointed as a manager of such corporation or limited liability company and is not, and has never been, and will not while serving as Independent Director be, any of the following:

- (i) a member (other than an independent, non-economic “springing” member), partner, equityholder, manager, director, officer or employee of such corporation or limited liability company or any of its equityholders or affiliates (other than as an independent director or manager of an affiliate of such corporation or limited liability company that is not in the direct chain of ownership of such corporation or limited liability company and that is required by a creditor to be a single purpose bankruptcy remote entity: provided, that such independent director or manager is employed by a company that routinely provides professional independent directors or managers);
- (ii) a creditor, supplier or service provider (including provider of professional services) to such corporation or limited liability company or any of its equityholders or affiliates (other than a nationally recognized company that routinely provides professional independent managers or directors and that also provides lien search and other similar services to such corporation or limited liability company or any of its equityholders or affiliates in the ordinary course of business);
- (iii) a family member of any such member, partner, equityholder, manager, director, officer, employee, creditor, supplier or service provider; or
- (iv) a Person that Controls or is under common Control with (whether directly, indirectly or otherwise) any Person described in clauses (i), (ii) or (iii) above.

A natural person who otherwise satisfies the foregoing definition other than subparagraph (i) by reason of being the Independent Director of an affiliate of the Corporation shall not be disqualified from serving as an Independent Director of the Corporation, provided that the fees that such natural person earns from serving as Independent Director of an affiliate in any given year constitute in the aggregate less than five percent of such natural person’s annual income for that year. The same natural persons may not serve as Independent Director of the Corporation and, at the same time, serve as Manager Directors of an equityholder or member of the Corporation.

- (iv) “Lender” shall mean **CBRE U.S. CREDIT PARTNERS FUNDING, LLC**, a Delaware limited liability company, together with its successors and assigns.

- (v) "Loan" means that certain Loan from Lender to Enclave Residences LLC in the maximum principal amount of \$37,200,000.00.
- (vi) "Person" means any natural person, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association or governmental authority and any fiduciary acting in such capacity on behalf of any of the foregoing.
- (vii) "Rating Agency" means, prior to the final securitization of the Loan, each of S&P, Moody's, Fitch, DBRS, Inc., Morningstar Credit Ratings, LLC, Kroll Bond Rating Agency, Inc. (or, in each case, its applicable affiliate, and their respective successors), or any other nationally-recognized statistical rating agency that has been designated by Lender and, after the final securitization of the Loan, shall mean any of the foregoing that have rated and continue to rate any of the Certificates (excluding unsolicited ratings).

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 incorporators, or board of directors without shareholder action and shareholder action was not required.
- ☒ 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)

October 1, 2021
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)

Walter S. Hagenbuckle

(Typed or printed name of person signing)

President/Director

(Title of person signing)