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00 DEC -4 PM 12:04  
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Reply To:

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Anthony A. Kalliche, Esq.

Direct Dial: (305) 260-1010

[akalliche@becker-poliakoff.com](mailto:akalliche@becker-poliakoff.com)

November 30, 2000

Corporate Records Bureau  
Division of Corporations  
Department of State  
P. O. Box 6327  
Tallahassee, Florida 32301

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-12/04/00--01125--006  
\*\*\*\*\*35.00 \*\*\*\*\*35.00

**Re: Amendment to Articles of Incorporation**

Dear Sir/Madam:

Enclosed herein please find a Certificate of Amendment to the Articles of Incorporation for Key Colony No. 3 Condominium Association, Inc., as well as a check in the amount of \$35.00 to cover the cost of filing.

Thank you for your attention to this matter.

*Amend, Postate, NL  
12-12-00  
BKS*

Very truly yours,

*Ana M. Suarez*

Ana M. Suarez

Secretary to Anthony A. Kalliche

/as

Enclosure

261236\_1.DOC

This instrument was prepared by:  
**ANTHONY A. KALLICHE, ESQUIRE**  
BECKER & POLIAKOFF, P.A.  
5201 Blue Lagoon Drive, Suite 100  
Miami, Florida 33126

**FILED**

00 DEC -4 PM 12: 04

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**ARTICLES OF AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF  
KEY COLONY NO. 3 – CONDOMINIUM ASSOCIATION, INC.**

WHEREAS, the Certificate of Incorporation of Key Colony No. 3 Condominium Association, Inc. (hereinafter the "Association") was issued by the Secretary of State of Florida on the 6th day of August, 1980; and

WHEREAS, at a duly re-convened Annual Meeting of the membership of the Association held on July 25, 2000, the amendment to the Amended and Restated Articles of Incorporation of The Emeraldbay at Key Colony – Condominium Association, Inc. as set out in Exhibit "A" hereto were adopted by a vote of the membership in excess of that required by the pertinent provisions of said Articles; and

NOW, THEREFORE, the undersigned hereby certifies that the amendment as set forth in Exhibits "A" attached hereto and incorporated herein is a true and correct copy of the Amended and Restated Articles of Incorporation of Emeraldbay at Key Colony – Condominium Association, Inc. as approved by the membership of the Association as set forth above.

WITNESS my signature hereto this 9th day of November, 2000 at Miami-Dade, Florida.

**KEY COLONY NO. 3 CONDOMINIUM  
ASSOCIATION, INC.**

BY: A. Camejo, President

PRINT: E. M. Kiene (Seal)

ATTEST: G. M. Kiene

Michelle Padron  
Witness  
Christa Rodriguez  
Witness  
Jesus E. Masur  
Witness

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 9th day of November 2000 by ANTONIO CAMEJO the President of KEY COLONY NO. 3 CONDOMINIUM ASSOCIATION, INC., a Florida not-for-profit corporation, on behalf of the corporation. Who is personally known to me or has produced ( ) as identification and who did/did not take an oath.

Grace A. Padron  
NOTARY PUBLIC SIGNATURE  
STATE OF FLORIDA AT LARGE

(SEAL)  
Grace A. Padron  
Commission # CC 774492  
Expires SEP 13, 2002  
BONDED THRU  
ATLANTIC BONDING CO., INC.

My commission expires:

GRACE A. PADRON  
PLEASE PRINT OR TYPE NOTARY SIGNATURE

EXHIBIT "A"  
EXHIBIT 5  
AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
FOR  
THE EMERALDBAY AT KEY COLONY - CONDOMINIUM  
ASSOCIATION, INC.

The undersigned Subscribers by these Articles associate themselves for the purpose of forming a corporation not for profit pursuant to the laws of the State of Florida, and hereby adopt the following Articles of Incorporation:

ARTICLE 1

NAME

The name of the corporation shall be The EmeraldBay at Key Colony Condominium Association, Inc. For convenience, the corporation shall be referred to in this instrument as the "Association", these Articles of Incorporation as the "Articles", and the By-Laws of the Association as the "By-Laws".

ARTICLE 2

PURPOSE

The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act (the "Act") for the operation of that certain condominium located in Dade County, Florida, and known as The EmeraldBay at Key Colony Condominium Association, Inc. (the "Condominium").

ARTICLE 3

DEFINITIONS

The terms used in these Articles shall have the same definitions and meaning as those set forth in the Declaration of the Condominium, unless herein provided to the contrary, or unless the context otherwise requires.

## ARTICLE 4

### POWERS

The powers of the Association shall include and be governed by the following:

- 4.1 General. The Association shall have all of the common-law and statutory powers of a corporation not for profit under the Laws of Florida that are not in conflict with the provisions of these Articles or of the Act.
- 4.2 Enumeration. The Association shall have all the powers and duties set forth in the Act except as limited by these Articles and the Declaration, and all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration, and as it may be amended from time to time, including but not limited to the following:
  - (a) To make and collect assessments and other charges against members as Unit Owners, and to use the proceeds thereof in the exercise of its powers and duties.
  - (b) To buy, own, operate, lease, sell and trade both real and personal property as may be necessary or convenient in the administration of the Condominium.
  - (c) To maintain, repair, replace, reconstruct, add to, and operate the Condominium property and other property acquired or leased by the Association for use by Unit Owners.
  - (d) To purchase insurance upon the Condominium property and the Recreation Area, and insurance for the protection of the Association, its officers, directors, and members as Unit Owners.
  - (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Condominium property and for the health, comfort, safety and welfare of the Unit Owners.
  - (f) To approve or disapprove the leasing, transfer, mortgaging, ownership and possession of units as may be provided by the Declaration.
  - (g) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the By-Laws, the Agreement For

Deed, and the rules and regulations for the use of the Condominium property.

- (h) To contract for the management of the Condominium and any facilities used by the Unit Owners, and to delegate to the party with whom such contract has been entered into all of the powers and duties of the Association except those which require specific approval of the Board of Directors or the membership of the Association.
  - (i) To employ personnel to perform the services required for proper operation of the Condominium.
- 4.3 Condominium property. All funds and the titles of all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declaration, these Articles, and the By-Laws.
- 4.4 Distribution of income. The Association shall make no distribution of income to its members, directors or officers.
- 4.5 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Declaration and the By-Laws.

## ARTICLE 5

### MEMBERS

- 5.1 Membership. The members of the Association shall consist of all of the record owners of units in the Condominium, and after termination of the condominium shall consist of those who are members at the time of the termination and their successors and assigns.
- 5.2 Assignment. The share of a member in the funds and any assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the unit for which that share is held.
- 5.3 Voting. On all matters upon which the membership shall be entitled to vote, there shall be only one vote for each unit, which vote shall be exercised or cast in the manner provided by the Declaration and By-Laws. Any person or entity owning more than one unit shall be entitled to one vote for each unit owned.

5.4 Meetings. The By-Laws shall provide for an annual meeting of members, and may make provision for regular and special meetings of members other than the annual meeting.

#### ARTICLE 6

##### TERM OF EXISTENCE

The Association shall have perpetual existence.

#### ARTICLE 7

##### SUBSCRIBERS

The names and addresses of the subscribers to these Articles are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Leo Goughan	104 Crandon Boulevard Miami, Florida 33149
Norman L. Welch	104 Crandon Boulevard Miami, Florida 33149
Charles Tokarz	104 Crandon Boulevard Miami, Florida 33149

#### ARTICLE 8

##### OFFICERS

The affairs of the Association shall be administered by the officers designated in the By-Laws. The officers shall be elected by the Board of Directors of the Association at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board of Directors. The By-Laws may provide for the removal from office of officers, for filling vacancies, and for the duties of the officers. The names and addresses of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

President:	Charles Tokarz
	104 Crandon Boulevard
	Miami, Florida 33149

Vice President and  
Assistant Secretary:

Norman L. Welch  
104 Crandon Boulevard  
Miami, Florida 33149

Secretary-Treasurer:

Leo Goughan  
104 Crandon Boulevard  
Miami, Florida 33149

#### ARTICLE 9

#### DIRECTORS

- 9.1 Number and qualification. The property, business and affairs of the Association shall be managed by a board consisting of the number of directors determined by the By-Laws, but which shall consist of not less than three (3) directors. All directors shall be Record Owners of Units or their spouses, or mortgagees of Units or a spouse of an individual mortgagee or, in the case of partnership Unit Owners or mortgagees, shall be members or employees (or their spouses) of such partnerships, or in the case of corporate Unit Owners or mortgagees, shall be directors, officers, stockholders or employees (or their spouses) of such corporation, or in the case of fiduciary Unit Owners or mortgagees, shall be the fiduciaries or their beneficiaries (or their spouses), or directors, officers, stockholders or employees (or their spouses) of a corporate fiduciary, or partners or employees (or their spouses) of a partnership fiduciary. No director shall continue to serve on the Board after he ceases to be a Unit Owner or an interested party in a Unit Owner as specified in the preceding sentence.
- 9.2 Duties and powers. All of the duties and powers of the Association existing under the Act, the Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Unit Owners when that is specifically required.
- 9.3 Election; removal. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

9.4 Term of Developer's directors. The Developer of the Condominium shall appoint the members of the first Board of Directors who shall hold office for the periods described in the By-Laws.

9.5 First directors. The names and addresses of the members of the first Board of Directors who shall hold office until their successors are elected and have qualified are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Leo Goughan	104 Crandon Boulevard Miami, Florida 33149
Norman L. Welch	104 Crandon Boulevard Miami, Florida 33149
Charles Tokarz	104 Crandon Boulevard Miami, Florida 33149

#### ARTICLE 10

##### INDEMNIFICATION

10.1 Indemnity. The Association shall indemnify any person 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 (other than an action by or in the right of the Association) by reason of the fact that he is or was a director, employee, officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he 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 no reasonable cause to believe his conduct was unlawful, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misfeasance or malfeasance in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application, that despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The termination of any action, suit or proceeding by judgement, 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 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 conduct was unlawful.

- 10.2 Expenses. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 10.1 above or in defense of any claim, issue or matter herein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.
- 10.3 Approval. Any indemnification under Section 10.1 above (unless ordered by a court) shall be made by the association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Section 10.1 above. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by a majority of the members.
- 10.4 Advances. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article.
- 10.5 Miscellaneous. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members or otherwise, both as to action in his official capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

- 10.6 Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as 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 in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

## ARTICLE 11

### BY-LAWS

The first By-Laws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded by the directors and members in the manner provided by the By-Laws.

## ARTICLE 12

### AMENDMENTS

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

- 12.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered.
- 12.2 Adoption. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than twenty percent (20 %) of the members of the Association at a meeting called for this purpose. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided that approval is delivered to the Secretary at or prior to the meeting. The approvals must be by vote of either:
- (a) A Majority of Unit Owners present in person or by proxy and voting at a duly called meeting where a quorum is present and by a vote of not less than two thirds (2/3rds) of the Board of Directors of the Association; or
  - (b) Unit Owners owning not less than two thirds (2/3rds) of the votes of the entire membership of the Association.

12.3 Limitation. Provided, however, that no amendment shall make any changes in the qualifications for membership nor in the voting rights or property rights of members, nor any changes in Sections 4.3, 4.4, and 4.5 of Article 4, entitled "Powers", without approval in writing by all members and the joinder of all record owners of mortgages upon units. No amendment shall be made that is in conflict with the Act or the Declaration, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to any institutional first mortgagee unless such mortgagee or affiliate shall join in the execution of the Amendment.

12.4 Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of the applicable Florida Statutes, and a copy certified by the Secretary of State shall be recorded in the public records of Dade County, Florida.

#### ARTICLE 13

##### INITIAL REGISTERED OFFICE ADDRESS AND NAME OF REGISTERED AGENT

The initial registered office of this corporation shall be, at c/o Fininvest, Ltd., 104 Crandon Boulevard, Miami, Florida 33149, with the privilege of having its Office and branch offices at other places within or without the State of Florida. The initial registered agent at that address shall be LEO GOUGHAN.

#### ARTICLE 14

##### CURRENT REGISTERED OFFICE ADDRESS AND NAME OF REGISTERED AGENT

The current registered office of this corporation shall be c/o Becker & Poliakoff, P.A., 5201 Blue Lagoon Drive, Suite 100, Miami-Dade County, Florida 33126, with the privilege of having its Office and branch offices at other places within or without the State of Florida. The current registered agent at that address shall be Anthony A. Kalliche.

The Board of Directors shall have the authority to change the registered office of this corporation and its registered agent as determined from time to time.

IN WITNESS WHEREOF, the subscribers have affixed their signatures  
this 5th day of August, 1980.

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

STATE OF FLORIDA     )  
                              )  
COUNTY OF DADE     )     SS:

The foregoing instrument was acknowledged before me this 5th day of  
August, 1980, by LEO GOUGHAN, NORMAN L. WELCH and CHARLES TOKARZ.

\_\_\_\_\_  
Notary Public, State of Florida  
at Large

CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE FOR THE SERVICE OF  
PROCESS WITHIN THIS STATE, NAMING AGENT UPON WHOM PROCESS MAY BE SERVED.

In compliance with the laws of Florida, the following is submitted:

First -- That desiring to organize under the laws of the State of  
Florida with its principal office, as indicated in the foregoing articles  
of incorporation, at City of Miami, County of Dade, State of Florida, the  
corporation named in the said articles has named Leo Goughan, located at  
104 Crandon Boulevard, Key Biscayne, 33149 City of Miami, County of Dade,  
State of Florida, as its statutory registered agent.

Having been named the statutory agent of said corporation at the place  
designated in this certificate, I hereby accept the same and agree to act  
in this capacity, and agree to comply with the provisions of Florida law  
relative to keeping the registered office upon.

\_\_\_\_\_  
REGISTERED AGENT

Dated this 5th day of August  
\_\_\_\_\_, 1980.