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*Amend*

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KEVIN T. WELLS, ESQ.  
DAVID C. MEYER, ESQ., L.L.M.\*  
KAREN L. KUSKIN, ESQ.  
ROBERT L. TODD, ESQ.

*THE LAW OFFICES OF*  
**KEVIN T. WELLS, P.A.**

CONDOMINIUM, HOMEOWNER,  
COOPERATIVE, MASTER  
AND COMMUNITY ASSOCIATIONS  
CIVIL LITIGATION

1800 SECOND STREET, SUITE 803  
SARASOTA, FL 34236  
TELEPHONE (941) 366-9191  
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EMAIL RTODD@KEVINWELLSPA.COM

\*LLM - REAL PROPERTY  
AND LAND DEVELOPMENT

December 15, 2009

Florida Secretary of State  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

Re: Certificate of Amendment  
Heron Harbour Condominium Owners' Association, Inc.

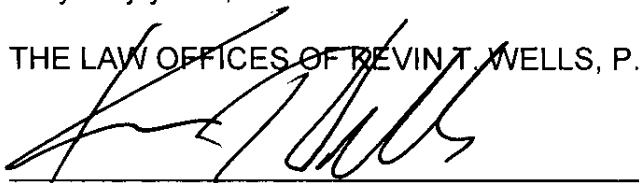
Dear Sir or Madam:

Please file the enclosed original Certificate of Amendment and Amended and Restated Articles of Incorporation for the above-referenced corporation. Also enclosed is a check from the Association in the amount of \$43.75 for the filing fee and certified copy fee. Please return a **certified copy** to the undersigned at your earliest convenience.

Thank you for your assistance in this matter.

Very truly yours,

THE LAW OFFICES OF KEVIN T. WELLS, P.A.

  
Kevin T. Wells, Esq.

KTW/elp  
Enclosures

Prepared by and return to:  
Kevin T. Wells, Esq.  
The Law Offices of Kevin T. Wells, P.A.  
22 S. Links Avenue, Suite 301  
Sarasota, Florida 34236  
(941) 366-9191 (Telephone)  
(941) 366-9292 (Facsimile)

FILED  
09 DEC 17 AM 8:57  
CLERK OF STATE  
TALLAHASSEE, FLORIDA

**CERTIFICATE OF AMENDMENT**

**ARTICLES OF INCORPORATION**

**HERON HARBOUR CONDOMINIUM OWNERS' ASSOCIATION, INC.  
A Florida Not For Profit Corporation**

We hereby certify that the attached amendments to the Articles of Incorporation of HERON HARBOUR CONDOMINIUM OWNERS' ASSOCIATION, INC. ("the Association"), a Florida corporation not-for-profit, were adopted by the affirmative vote of not less than a majority of all members present (in person or by proxy) at the Annual Membership Meeting of the Association held on April 9, 2009, which is sufficient for adoption under Article XV of the Articles of Incorporation of the Association. The Association further certifies that the amendment was proposed and adopted as required by the governing documents and by Florida law.

DATED this 9TH day of DECEMBER 2009.

Signed, sealed and delivered:  
in the presence of:

sign Denise Duffina  
print Denise Duffina

sign Carole Bowden  
print CAROLE BOWDEN

**HERON HARBOUR CONDOMINIUM  
OWNERS' ASSOCIATION, INC.**

By: Elmer Schrupf  
Elmer Schrupf, President

Signed, sealed and delivered:  
in the presence of:

sign Denise Duffina  
print Denise Duffina

sign Carole Bowden  
print CAROLE BOWDEN

Attest: Tom Miller  
Tom Miller, Secretary

(Corporate Seal)

STATE OF FLORIDA  
COUNTY OF MANATEE

The foregoing instrument was acknowledged before me this 9<sup>TH</sup> day  
of DECEMBER, 2009, by Elmer Schrupf as President of Heron Harbour  
Condominium Owners' Association, Inc., a Florida not for profit corporation, on behalf of  
the corporation. He is personally known to me ~~or has produced~~  
as identification.

NOTARY PUBLIC

sign

print

Molly Treworgy

State of Florida at Large (Seal)

My Commission Expires:



MOLLY A. TREWORGY  
MY COMMISSION # DD 864854  
EXPIRES: March 14, 2013  
Bonded Thru Budget Notary Services

STATE OF FLORIDA  
COUNTY OF MANATEE

The foregoing instrument was acknowledged before me this 9<sup>TH</sup> day  
of DECEMBER, 2009, by Tom Miller as Secretary of Heron Harbour Condominium  
Owners' Association, Inc., a Florida not for profit corporation, on behalf of the corporation.  
He is personally known to me ~~or has produced~~ as identification.

NOTARY PUBLIC

sign

print

Molly Treworgy

State of Florida at Large (Seal)

My Commission Expires:



MOLLY A. TREWORGY  
MY COMMISSION # DD 864854  
EXPIRES: March 14, 2013  
Bonded Thru Budget Notary Services

## AMENDMENTS

### ARTICLES OF INCORPORATION

#### OF

#### HERON HARBOUR CONDOMINIUM OWNERS' ASSOCIATION, INC.

*[Additions are indicated by underline; deletions by ~~strike-through~~]*

~~We, the undersigned, hereby associate ourselves together for the purpose of becoming a corporation not for profit under the laws of the State of Florida, by and under the provisions of the statutes of the State of Florida, providing for the formation, liability, rights, privileges and immunities of a corporation not for profit.~~

The membership of **HERON HARBOUR CONDOMINIUM OWNERS' ASSOCIATION, INC.**, a Florida Not For Profit Corporation, hereby adopts the following amendments to its Articles of Incorporation:

#### ARTICLE I

##### NAME OF ASSOCIATION

The name of this corporation shall be **HERON HARBOUR CONDOMINIUM OWNERS' ASSOCIATION, INC.**, hereinafter referred to as the "Association."

#### ARTICLE II

##### GENERAL NATURE OF BUSINESS

The general nature of the business to be conducted by the Association shall be the operation and management of the affairs and property of the Condominium known as **HERON HARBOUR, A CONDOMINIUM**, located in the County of Manatee, Florida, and to perform all acts provided in the Declaration of Condominium of said Condominium, originally recorded in Official Records Book 1007, Page 2803 et seq. of the Public Records of Manatee County (herein, the "Declaration"), and the Condominium Act, Chapter 718, Florida Statutes as said act ~~exists on the date hereof~~ may be amended from time to time (herein, the "Condominium Act").

#### ARTICLE III

##### POWERS

A. The Association shall have all of the Condominium Law and statutory powers of a corporation not for profit and all of the powers and duties set forth in said Condominium Act and the Declaration of Condominium of **HERON HARBOUR, A CONDOMINIUM**, as amended from time to time, including, but not limited to the following:

1. To make, amend and collect annual and special assessments against members as unit owners to defray the cost, expenses and losses of the Condominium; and to

make special assessments against members as Unit Owners for ~~unpaid fines or for~~ maintenance or repair which is the responsibility of the unit owner.

2. To use the proceeds of assessments in the exercise of its powers and duties.

3. To maintain, repair, replace and operate the condominium property which shall include the irrevocable right to access to each unit from time to time during reasonable hours as may be necessary for such maintenance, repair or replacement of any of the common elements therein, or accessible therein or there from, or for making an emergency repair therein, that may be necessary to prevent damage to the common elements, or to another unit or units.

4. To purchase insurance upon the condominium property, and insurance for the protection of the Association and its members as unit owners.

5. To reconstruct the improvements after casualty and to further improve the property.

6. To make and amend reasonable rules and regulations regulating the use of the Condominium property ~~in the Condominium and for the health, comfort, safety and welfare of unit owners.~~

7. To approve or disapprove the transfer, mortgage, ownership and leasehold of units in the Condominium, as provided by the Declaration of Condominium and the By-Laws of the Association.

8. To enforce by legal means the provisions of the Condominium Act, the Declaration of Condominium, these Articles, the By-Laws of the Association and the rules and regulations for the use of the Condominium property ~~in the Condominium.~~

9. To levy fines for violation of approved condominium rules and regulations, or violations of the provisions of the Declaration, these Articles or the By-Laws, all as set forth in the By-Laws.

10. To contract for the management, operation and administration of the Condominium and to delegate to such contractor all powers and duties of the Association, except as are specifically required by the Declaration of Condominium to be performed by or have the approval of the Board of Directors or the membership of the Association.

11. To employ personnel for reasonable compensation to perform the services required for the proper administration of the purposes of the Association.

12. To pay taxes and assessments which are liens against any part of the Condominium, other than the individual units, unless the individual unit or units are owned by the Association, and the appurtenances thereto, and to assess the same against the unit and the owner of the unit which is subject to such liens.

13. To enter into agreements whereby it acquires leasehold memberships and other possessory or use interest in the lands or facilities, whether or not contiguous to the

lands of the Condominium, intended to provide for the enjoyment, recreation or other use benefits of the unit owners.

14. To purchase a unit or units in the Condominium in accordance with the provisions of the Declaration and to hold, lease, mortgage and convey the same.

15. To enter into agreements for construction of recreation facilities, or buildings, or master T.V. antenna systems, and other amenities or facilities for the benefit of the unit owners and to borrow money for the purpose of carrying out such construction and to mortgage, lease or otherwise provide security for the repayment of said funds.

16. In the event of an emergency as defined in Article III.B. herein, the Board of Directors may exercise the emergency powers described herein, and any other powers authorized by the provisions of the Condominium Act and Sections 617.0207 and 617.0303, Florida Statutes, all as amended from time to time.

B. For purposes of this Article III.B. only, an emergency exists during a period of time that the Condominium, or the immediate geographic area in which the Condominium is located, is subjected to: a state of emergency declared by civil or law enforcement authorities; a hurricane watch or warning as issued by a governmental authority; a partial or complete evacuation order issued by civil or law enforcement authorities; the declaration of a federal or state "disaster area" status; or catastrophe, whether natural or manmade, which seriously damages, or threatens to seriously damage the physical existence of the Condominium. During an emergency as defined herein, the Board of Directors may exercise the following emergency powers:

1. Conduct Board meetings and membership meetings with notice given as is practicable. Such notice may be given in any practicable manner, including publication, telephone, radio, United States mail, email, the Internet, public service announcements, and conspicuous posting on the Condominium Property or any other means the Board deems reasonable under the circumstances. Notice of Board decisions may be communicated as provided in this Article. The directors in attendance at such a Board meeting (if more than one (1) director) shall constitute a quorum.

2. Cancel and reschedule any Association Board, membership or committee meeting.

3. Name as interim assistant officers persons who are not directors, which assistant officers shall have the same authority as the executive officers to whom they are assistants during the state of emergency to accommodate the incapacity or unavailability of any officer of the Association.

4. Relocate the Association's principal office or designate alternative principal offices.

5. Enter into agreements with local counties and municipalities to assist counties and municipalities with debris removal.

6. Implement a disaster plan before or immediately following the event for which a state of emergency is declared which may include, but is not limited to, shutting down or off elevators; electricity; water, sewer, or security systems; or air conditioners.

7. Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the Board, determine any portion of the condominium property unavailable for entry or occupancy by unit owners, family members, tenants, guests, agents, or invitees to protect the health, safety, or welfare of such persons.

8. Require the evacuation of the condominium property in the event of a mandatory evacuation order in the locale in which the Condominium is located. Should any unit owner or other occupant of the Condominium fail or refuse to evacuate the condominium property where the Board has required evacuation, the Association shall be immune from liability or injury to persons or property arising from such failure or refusal.

9. Based upon advice of emergency management officials or upon the advice of licensed professionals retained by the Board, determine whether the condominium property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the Declaration.

10. Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of mold, mildew or fungus by removing and disposing of wet drywall, insulation, carpet, carpet pad, baseboards, air ducts, cabinetry, any and all personal property or belongings of the resident or owner, including but not limited to furniture, clothes, mattresses, and all other fixtures on or within the condominium property, even if the unit owner is obligated by the Declaration or law to insure or replace those fixtures and to remove personal property from a Unit.

11. Contract, on behalf of any unit owner or owners, for items or services for which the owners are otherwise individually responsible for, but which are necessary to prevent further damage to the condominium property. In such event, the unit owner or owners on whose behalf the Board has contracted are responsible for reimbursing the Association for the actual costs of the items or services, and the Association may use its assessment and claim of lien authority provided by Section 718.116, Florida Statutes and in the Declaration of Condominium to enforce collection of the charges. Without limitation, such items or services may include the drying of units, the boarding or other enclosure of broken or damaged windows, sliding glass doors, exterior doors, and the replacement of damaged air conditioners or air handlers to provide climate control in the units or other portions of the Condominium Property.

12. Regardless of any provision to the contrary and even if such authority does not specifically appear in the Declaration of Condominium, Articles of Incorporation, or Association By-Laws, the Association's Board of Directors may levy one or more special assessments without a vote of the owners.

13. Without unit owners' approval, borrow money and pledge Association assets as collateral to fund emergency repairs and carry out the duties of the Association when operating funds are insufficient. This paragraph does not limit the general authority of the Association to borrow money, subject to such restrictions as are contained in the Declaration of Condominium, Articles of Incorporation, or Association Bylaws.



14. Corporate action taken in good faith to meet the emergency needs of the Association or its unit owners shall: (1) bind the Association, (2) have the rebuttable presumption of being reasonable and necessary and (3) may not be used to impose liability on a director, officer, or employee. An officer, director, or employee, acting in good faith and in accordance with this Article III.B. is only liable for willful misconduct.

15. The special powers authorized above in this Article III.B. shall be limited to the time period reasonably necessary to protect the health, safety, and welfare of the Association and the unit owners and the unit owners' family members, tenants, guests, agents, or invitees and shall be reasonably necessary to mitigate further damage and make emergency repairs to the condominium property.

#### **ARTICLE IV**

##### **MEMBERS**

All persons owning a condominium unit of HERON HARBOUR, A CONDOMINIUM, PHASE I, and, if completed, PHASE II, III, and IV, as evidenced by a duly recorded deed or other appropriate instrument of conveyance, in the Public Records of Manatee County, Florida, shall be members of the Association. Membership in the Association shall terminate automatically and immediately as a member's interest in the title terminates, except that upon termination of the entire condominium project, the membership shall consist of those who were members at the time of each conveyance of the respective units to the trustee as provided in said Declaration of Condominium. In the event a unit is owned by a legal entity other than a natural person, the officer, director or other official so designated by such legal entity shall exercise its membership rights.

After the Association approves of a conveyance of a condominium unit in the manner provided in the Declaration of Condominium, the change of membership in the Association shall be evidenced in the Association records by delivery to the Secretary of a certified copy of the recorded deed or other instrument of conveyance.

~~Prior to the recording of said Declaration of condominium in the Public Records of said county, the subscribers hereto shall remain the members of the Association and shall each be entitled to one vote.~~

#### **ARTICLE V**

##### **VOTING RIGHTS**

Each condominium unit shall be entitled to one vote at Association meetings, as may be provided in the Bylaws or Declaration, notwithstanding that the same owner may own more than one unit or that units may be joined together and occupied by one owner. In the event of a joint ownership of a condominium unit, the vote to which that unit is entitled shall be apportioned among the owners as their interest may appear, or may be exercised by one of such joint owners by written agreement of the remainder of the unit owners.

**ARTICLE VI**  
**INCOME DISTRIBUTION**

No part of the income of the Association ~~this corporation~~ shall be distributable to its members, except as compensation for services rendered.

**ARTICLE VII**  
**EXISTENCE**

~~The Association This Corporation~~ shall exist perpetually unless dissolved according to law. ~~Existence shall commence at the time of filing of these Articles of Incorporation by the Department of State, Florida.~~

**ARTICLE VIII**  
**REGISTERED OFFICE AND REGISTERED AGENT**

The registered agent and office of the Association ~~corporation~~ shall be at ~~525 7th Avenue, Palmetto, Florida, 33561, and the registered agent at such address shall be David P. Stillerman Holmes Beach Property Management, located at 6400 Manatee Ave. West, Suite G, Bradenton, FL 34209.~~ The Association's Board of Directors may change the Association's registered agent and office from time to time in the manner provided by law.

**ARTICLE IX**  
**BOARD OF DIRECTORS**

The affairs of the Association shall be managed by a Board of Directors ~~Administration~~ consisting of a number of directors determined by the By-Laws, but not less than three (3) directors nor more than ~~nine (9)~~ seven (7) directors; however, the Board shall always consist of an odd number of directors. ~~Directors shall be members of the Association except as otherwise provided herein.~~

Directors of the Association shall be elected at the annual meeting of the members, in the manner determined by the By-Laws of the Association and by the Condominium Act. Directors may be removed and vacancies on the Board of Administration shall be filled in the manner provided by the By-Laws and by the Condominium Act. ~~The requirements of the Declaration of Condominium shall be observed in regard to the election of the directors on the Board. The first election of directors shall not be held until such time as the members of the Association are entitled to elect a director as provided in the Declaration of Condominium and in the Condominium Laws of the State of Florida.~~

~~The names and addresses of the initial directors of the Board who have been selected by the Developer and who shall serve until their successors are elected and have qualified or until they resign or are removed, are as follows:~~

NAME	ADDRESS
GORDON E. POWERS	525—7 <sup>TH</sup> Avenue Palmetto, Florida 33561
DAVID P. STILLERMAN	525—7 <sup>TH</sup> Avenue Palmetto, Florida 33561

DALE B. LINDSAY

525—7<sup>TH</sup> Avenue  
Palmetto, Florida 33564

~~Any vacancy occurring in the Board prior to the first election shall be filled by the remaining directors.~~

#### **ARTICLE X** **OFFICERS**

The affairs of the Association shall be administered by officers designated in the By-Laws of the Association. The officers shall be elected by the Board of Directors Administration at its first meeting following the annual meeting of the Association, and shall serve at the pleasure of the Board of Directors Administration. ~~The initial officers are as follows:~~

NAME	TITLE
GORDON E. POWERS	President
DAVID P. STILLERMAN	Vice President/Treasurer
DALE B. LINDSAY	Secretary

#### **ARTICLE XI** **INDEMNIFICATION**

The Association shall indemnify every director and every officer ~~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, by reason of the fact that he is or was a director, employee, officer or agent of the Association, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding, unless: (a) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith, or 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, that he had reasonable cause to believe his conduct was unlawful; and, (b) such court further specifically determines that indemnification should be denied. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of not 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. The Association's Board of Directors may also elect to indemnify any committee member or other person if it believes such indemnification shall be in the best interests of the Association and the membership.

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 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorney's fees) actually and reasonably incurred by him in connection therewith.

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 each action, suit or proceeding upon receipt an undertaking by or on behalf of the affected 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 XI.

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, 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 and personal representatives of such person.

The Association shall have the power to purchase and maintain insurance of 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.

Anything to the contrary herein notwithstanding, the provisions of this Article XI may not be amended without the prior written consent of all persons whose interest would be adversely affected by such amendment.

## ARTICLE XII RIGHTS OF DEVELOPER

~~HERON HARBOUR, A JOINT VENTURE, which is the Developer of HERON HARBOUR, A CONDOMINIUM, shall have full right and authority to manage the affairs and exclusive right to elect the directors of the Association (who need not be unit owners) until the following shall occur:~~

~~1. When fifteen percent (15%) or more of the units that will be operated ultimately by the Association are conveyed to owners other than Developer, such unit owners shall be entitled to elect not less than one third (1/3) of the Board of Administration.~~

~~2. Within three (3) years after fifty percent (50%) or within three (3) months after ninety percent (90%) of the units that will be operated ultimately by the Association are conveyed to owners other than Developer, such unit owners shall be entitled to elect a majority of the Board of Administration.~~

~~3. When all the units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none are being offered for sale by the Developer in the ordinary course of business, or when some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business, whichever occurs first, such unit owners shall be en-titled to elect a majority of the Board of Administration.~~

4. ~~Developer shall be entitled to elect at least one (1) member of the Board of Administration as long as Developer holds at least five percent (5%) of the units in HERON HARBOUR, A CONDOMINIUM, for sale in the ordinary course of business. During the period Developer is in control of the Association, the directors shall exercise all rights which would otherwise be exercisable by the members.~~

**ARTICLE XIII**  
**BY-LAWS**

~~The By-Laws of the Association shall be adopted by the Board of Administration and may be altered, amended, or rescinded in the manner provided for in the By-Laws by majority vote of the voting rights of the members.~~

**ARTICLE XIIIIV**  
**SUBSCRIBERS**

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

<u>NAME</u>	<u>ADDRESS</u>
GORDON E. POWERS	525 – 7 <sup>TH</sup> Avenue Palmetto, Florida 33561
DAVID P. STILLERMAN	525 – 7 <sup>TH</sup> Avenue Palmetto, Florida 33561
DALE B. LINDSAY	525 – 7 <sup>TH</sup> Avenue Palmetto, Florida 33561

**ARTICLE XIV**  
**AMENDMENTS**

~~The Association may corporation reserves the right to amend, alter, change or repeal any provisions contained in these Articles of Incorporation by a simple majority vote of all voting rights of all members of the Association (that is at least 20 of the 38 voting interests) corporation or, to the extent then applicable, in accordance with the provisions contained in Paragraph 22 of the Declaration of Condominium, and all rights conferred upon the members herein are granted subject to this reservation; provided however, that no amendment shall make any changes in the qualification for membership or voting rights of members without the written approval by all members and the joinder of all record owners of the mortgages upon the Condominium. No amendment shall be made which is in conflict with the Condominium Act of the State of Florida, or the Declaration of Condominium of HERON HARBOUR, A CONDOMINIUM.~~