

N00535

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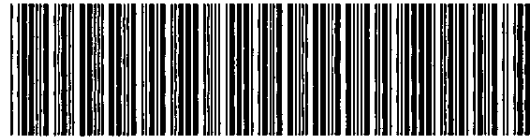
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SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
12 MAR 20 PM 4:35

Amended CC  
Restated  
@ 3/20/12

Kevin T. Wells, Esq.  
Karen L. Kuskin, Esq.  
Sue Ellen Krick, Esq.  
Jackson C. Kracht, Esq.  
Leah K. Bolea, Esq.\*\*  
Paul E. Olah, Jr., Esq.\*

\*\*Admitted to practice  
in TN and CA



Attorneys at Law

A Professional Association

Condominium, Homeowner,  
Cooperative, Master and  
Community Associations  
Civil Litigation

\*Board Certified  
in Construction Law



February 29, 2012

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

Re: Certificate of Amendment  
Bayview of Bradenton Beach Condominium 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.

A handwritten signature in black ink, appearing to read "Kevin T. Wells", is written over a horizontal line.

Kevin T. Wells, Esq.

KTW/elp  
Enclosures



FLORIDA DEPARTMENT OF STATE  
Division of Corporations

March 12, 2012

THE LAW OFFICES OF KEVIN T. WELLS  
1800 SECOND STREET  
SUITE 808  
SARASOTA, FL 34236

SUBJECT: BAYVIEW OF BRADENTON BEACH CONDOMINIUM  
ASSOCIATION, INC.  
Ref. Number: N00535

We have received your document for BAYVIEW OF BRADENTON BEACH CONDOMINIUM 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):

Please file the document as either Articles of Amendment or Restated Articles of Incorporation pursuant to applicable Florida Statutes.

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 Albright  
Regulatory Specialist II

Letter Number: 712A00009002

RECEIVED  
12 MAR 20 AM 10:22  
TALLAHASSEE, FLORIDA

**AMENDED AND RESTATED**

**ARTICLES OF INCORPORATION  
OF**

**BAYVIEW OF BRADENTON BEACH CONDOMINIUM ASSOCIATION, INC.**

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
12 MAR 20 PM 4:35

*[Substantial rewording of Articles of Incorporation.  
See existing Articles of Incorporation for present text.]*

The members of **BAYVIEW OF BRADENTON BEACH CONDOMINIUM ASSOCIATION, INC.** located in Manatee County, Florida, adopt these Amended and Restated Articles of Incorporation. The original Articles of Incorporation were filed with the Office of Secretary of State on December 22, 1983. The original Declaration of Condominium of **BAYVIEW OF BRADENTON BEACH, A CONDOMINIUM** was recorded at Official Records Book 1070, Page 1426 et seq., of the Public Records of Manatee County, Florida.

**1. NAME OF CORPORATION AND PRINCIPAL ADDRESS.**

The name of the corporation shall be **BAYVIEW OF BRADENTON BEACH CONDOMINIUM ASSOCIATION, INC.** (herein, the "Association"). The street address of the principal office of the corporation shall be 108 9<sup>th</sup> Street South, Bradenton Beach, Florida 34218. The Association's Board of Directors may change the location of the principal office from time to time.

**2. PURPOSES.**

**2.1 Purpose.** The purpose for which the Association is organized is to provide an entity pursuant to Chapter 718, Florida Statutes (herein, the "Condominium Act"), for the operation and management of the affairs and property of **BAYVIEW OF BRADENTON BEACH, A CONDOMINIUM**, located in Manatee County, Florida, and to perform all other acts provided in the Declaration of Condominium of said condominium and the Condominium Act.

**2.2 Distribution of Income.** The Association shall be organized as a Florida corporation not for profit. As such, it shall issue no stock and make no distribution of income to its members, directors or officers.

**3. POWERS.**

**3.1 Common Law and Statutory Powers.** The Association shall have all of the common law and statutory powers of a corporation not for profit, not in conflict with the terms of these Articles of Incorporation, the Association Bylaws, the Declaration of Condominium or the Condominium Act.

**3.2 Specific Powers.** The Association's Board of Directors shall have all of the powers and duties set forth in the Condominium Act and the Florida Not for Profit Corporation Act. The Board shall also have all the powers and duties set forth in the Declaration of Condominium (herein, the "Declaration") and the Association Bylaws, as they may be amended from time to time; and all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration and the Condominium Act, including, but not limited to, the following:

- A. To make, amend and collect annual and special assessments against members as unit owners to defray the common expenses and losses of the Association.
- B. To use the proceeds of assessments in the exercise of its powers and duties.
- C. To maintain, repair, alter, improve, replace, administer and operate the condominium property, which shall include the irrevocable right of access to each unit during reasonable hours when necessary for the inspection, maintenance, repair or replacement of any common elements or any portion of the unit to be maintained by the Association pursuant to the Declaration or as necessary to inspect and/or prevent damage to the common elements or a unit or units.
- D. To purchase insurance upon the condominium property and insurance for the protection of the Association, its directors, officers and its members as unit owners.
- E. To reconstruct improvements after casualty and to further improve the condominium property.
- F. To make and amend reasonable rules and regulations regarding the use and occupancy of the units and common elements of the Condominium.
- G. To approve or disapprove the sale, transfer, lease, mortgage and ownership of units in the Condominium.
- H. To enforce by legal means the provisions of the Condominium Act, the Declaration, these Articles of Incorporation, the Association Bylaws and the Association Rules.
- I. To contract for the management, operation, administration and maintenance of the condominium property and to delegate to such contractor any powers and duties of the Association, except such as are specifically required by the Declaration, these Articles of Incorporation, the Association Bylaws or by the Condominium Act to have the approval of the Board of Directors or the membership.
- J. To employ personnel for reasonable compensation to perform the services required for proper administration and operation of the Condominium.

K. To enter into agreements acquiring leaseholds, membership and other possessory or use interests in 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.

**3.3 Emergency Powers.** In the event of an emergency as defined herein, the Board of Directors may exercise the emergency powers described herein, and any other powers authorized by the provisions of Section 718.1265, Florida Statutes, and Sections 617.0207 and 617.0303, Florida Statutes, all as amended from time to time. For purposes of this Article 3.3 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:

A. 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 Section. The directors in attendance at such a Board meeting (if more than one (1) director) shall constitute a quorum.

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

C. 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.

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

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

F. 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, electricity; water, sewer, or security systems; or air conditioners.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. 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 Bylaws, the Association's Board of Directors may levy one or more special assessments without a vote of the owners.

M. 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 for emergency purposes, subject to such other restrictions as are contained in the Declaration of Condominium, Articles of Incorporation, or Association Bylaws.

N. Corporate action taken in good faith to meet the emergency needs of the Association or its unit owners shall bind the Association; have the rebuttable presumption of being reasonable and necessary; and 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 Section is only liable for willful misconduct.

The special powers authorized above in this Article 3.3 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.

**3.4 Assets Held in Trust.** All funds and the titles of all properties acquired by the Association and the proceeds thereof shall be held in trust for the members in accordance with the provisions of the Condominium Act, the Declaration, these Articles of Incorporation and the Association Bylaws.

**3.5 Limitation on Exercise of Powers.** The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Condominium Act, the Declaration, these Articles of Incorporation and the Association Bylaws.

#### **4. MEMBERS.**

**4.1 Members.** All persons owning a vested present interest in the fee title to any of the condominium units of **BAYVIEW OF BRADENTON BEACH, A CONDOMINIUM**, as evidenced by a duly recorded proper instrument in the Public Records of Manatee County, Florida, shall be members. Membership shall terminate automatically and immediately as a member's vested interest in the fee title terminates by virtue of a proper instrument duly recoded in the Public Records of Manatee County, Florida, 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 person designated in writing by such legal entity shall exercise its membership rights.

**4.2 Change of Membership.** After receiving written approval of the Association's Board of Directors required by the Declaration, change of membership in the Association shall be established by the recording in the Public Records of Manatee County, Florida, a deed or other appropriate instrument establishing a record interest to a



unit in the Condominium and the delivery to the Association of a certified copy of such instrument.

**4.3 Limitation on Transfer of Shares of Assets.** The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner, except as an appurtenance to the member's condominium unit.

## **5. VOTING RIGHTS.**

Each unit shall be entitled to one (1) vote per unit, notwithstanding the same owner may own more than one unit or that units may be joined together and occupied by one owner. The manner of exercising voting rights shall be determined by the Declaration of Condominium, Articles of Incorporation and Bylaws.

## **6. INCOME DISTRIBUTION.**

No part of the income of the Association shall be distributable to members.

## **7. EXISTENCE.**

The Association shall exist perpetually unless dissolved according to law.

## **8. BOARD OF DIRECTORS.**

**8.1 Board of Directors.** The business and affairs of the Association shall be managed by the Board of Directors, composed as provided in the Association Bylaws, but in no event consisting of less than three (3) directors. A director must fulfill all requirements of eligibility provided in the Bylaws and Declaration.

**8.2 Election of Directors.** Directors of the Association shall be elected at the annual meeting of members in the manner determined by the Association Bylaws and the Condominium Act. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws and the Condominium Act.

## **9. OFFICERS.**

The affairs of the Association shall be administered, as directed by the Board, by the officers designated in the Bylaws. The officers shall be elected by the Board of Directors at its organizational meeting following the annual meeting of the members of the Association. Officers shall serve at the pleasure of the Board of Directors.

## **10. INDEMNIFICATION OF OFFICERS AND DIRECTORS.**

**10.1 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 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 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 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 (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 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. 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.

**10.2 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 Article 10.1 above, or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses (including attorney's fees and appellate attorney's fees) actually and reasonably incurred by him or her in connection therewith.

**10.3 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 or she is not entitled to be indemnified by the Association as authorized by this Article 10.

**10.4 Miscellaneous.** The indemnification provided by this Article 10 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.

**10.5 Insurance.** The Association has 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 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.

**10.6 Amendment.** Anything to the contrary herein notwithstanding, the provisions of this Article 10 may not be amended without the approval in writing of all persons whose interest would be adversely affected by such amendment.

**10.7 Delegation.** To the extent permitted by law, the powers and duties of the directors and officers may be delegated for the purpose of management.

## **11. BYLAWS.**

*The Association Bylaws may be amended in the manner provided in the Bylaws.*

## **12. AMENDMENTS.**

**12.1 Proposal.** An amendment to these Articles of Incorporation may be proposed by the Board of Directors or by at least twenty percent (20%) of the Association's voting interests (that is, at least 2 voting interests). Upon an amendment to these Articles of Incorporation being proposed by said Board of Directors or members, such proposed amendment shall be transmitted to the President of the Association or other officer of the Association in the absence of the President, who shall thereupon call a special meeting of the members of the Association for a date not sooner than fourteen (14) days nor later than sixty (60) days from the receipt by him of the proposed Articles of Incorporation amendment and it shall be the duty of the Secretary to give to each member written or printed notice of such meeting in the manner provided for in the Bylaws.

**12.2 Adoption.** At such membership meeting, the Articles of Incorporation amendment proposed must be approved by an affirmative vote of not less than a majority of the unit owners (that is, at least 5 voting interests). Thereupon, such Articles of Incorporation amendment shall be recorded in the Public Records along with a certificate of amendment. Membership approval may be obtained at a membership meeting or in writing without a membership meeting.

**12.3 Effective Date.** An amendment when adopted shall become effective after being recorded in the Manatee County Public Records and filed with the Secretary of State.

**12.4 Automatic Amendment.** These Articles of Incorporation shall be deemed amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Condominium or the Bylaws. Whenever Chapter 718, Florida Statutes, Chapter 617, Florida Statutes, or other applicable statutes or administrative regulations, as amended from time to time, are amended to impose procedural requirements less stringent than set forth in these Articles of Incorporation, the Board may operate the Association pursuant to the less stringent requirements. The Board of Directors, without a

vote of the owners, may adopt by majority vote, amendments to these Articles of Incorporation as the Board deems necessary to comply with such operational changes as may be enacted by future amendments to Chapters 607, 617, and 718 of the Florida Statutes, or such other statutes or administrative regulations as required for the operation of the Association, all as amended from time to time.

**12.5 Proviso.** No amendment shall change the configuration of any unit or the share in the common elements appurtenant to it, or increase the owner's share of the common expenses, unless the record owner of the unit concerned and all record owners of the mortgages on such unit shall join in the execution of the amendment, and all other unit owners approve the amendment.

**12.6 Certification.** A copy of each amendment shall be filed with the Florida Secretary of State and shall be recorded in the Public Records of Manatee County, Florida, along with a certificate of amendment executed by the appropriate officers of the Association attesting that the amendment has been lawfully adopted.

### **13. SUBSCRIBERS.**

The names and addresses of the original subscriber of these Articles of Incorporation are:

<u>Name</u>	<u>Address</u>
Mac Scott	2168 Main Street Sarasota, Florida 33577
Robert E. Henshaw, Jr.	2168 Main Street Sarasota, Florida 33577
Violet D. Glanden	2168 Main Street Sarasota, Florida 33577

### **14. REGISTERED OFFICE AND AGENT.**

The registered agent and office of the Association, until otherwise determined by the Board of Directors, shall be Tom Condrón, Holmes Beach Property Management, LLC, located at 6400 Manatee Avenue West, Suite G, Bradenton, Florida 34209. The Association's Board of Directors is authorized to change its Registered Agent and Registered Office in the manner provided by law.

Prepared by and return to:  
Kevin T. Wells, Esq.  
The Law Offices of Kevin T. Wells, P.A.  
1800 Second Street, Suite 808  
Sarasota, Florida 34236  
(941) 366-9191 (Telephone)  
(941) 366-9292 (Facsimile)

Amended  
AND  
RESTATED

~~RECEIVED~~

## ARTICLES OF INCORPORATION

### BAYVIEW OF BRADENTON BEACH CONDOMINIUM ASSOCIATION, INC. A Florida Not For Profit Corporation

We hereby certify that the attached amendments to the Articles of Incorporation of BAYVIEW OF BRADENTON BEACH CONDOMINIUM ASSOCIATION, INC. (the "Association"), a Florida corporation not-for-profit, were adopted by the affirmative vote of a majority vote of all voting rights of all members of the Association, which is sufficient for adoption under Article X of the Articles of Incorporation of the Association. The Association further certifies that the attached amendments were proposed and adopted as required by the governing documents and by Florida law.

DATED this 9<sup>th</sup> day of January, 2012.

Signed, sealed and  
delivered in the presence of:

BAYVIEW OF BRADENTON BEACH  
CONDOMINIUM ASSOCIATION, INC.

Sign: Tom Conroy

By: Susan J. Moreno  
Vice, President

Print: Tom Conroy

Sign: Mano A. Moreno

Print: Mano A. Moreno

Sign: Donna J. Amari

ATTEST:  
By: Donna J. Amari  
Secretary

Print: DONNA J. AMARI

Sign: Kristine M. Locall

Print: Kristine M. Locall

[Corporate Seal]

STATE OF FLORIDA  
COUNTY OF MANATEE

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of January, 2012, by SUSAN MORENO as President of Bayview of Bradenton Beach Condominium Association, Inc., a Florida corporation not for profit, on behalf of the corporation. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

NOTARY PUBLIC

Sign: Molly Treworgy

Print: \_\_\_\_\_

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 January, 2012, by LEONARD AMAR as Secretary of Bayview of Bradenton Beach Condominium Association, Inc., a Florida corporation not for profit, on behalf of the corporation. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

NOTARY PUBLIC

Sign: Molly Treworgy

Print: \_\_\_\_\_

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