

N020000007015

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04/18/03--01061--013 **44.75

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

03 MAY 27 AM 9:44

FILED

AM + Restated
CRB 5/28

GRAYHARRIS
ATTORNEYS AT LAW

SUITE 2200
201 N. FRANKLIN STREET (33602)
P.O. BOX 3324
TAMPA, FLORIDA 33601
TEL 813-273-5000
FAX 813-273-5145
WEB grayharris.com

WRITER'S DIRECT DIAL
813-273-5165

May 23, 2003

E-MAIL ADDRESS
mlmiller@grayharris.com

Department of State
Division of Corporations
Corporate Filings
409 East Gaines Street
Tallahassee, FL 32399

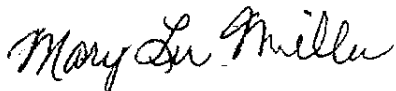
Re: Cape Haze Marina Bay Community Association, Inc.
Document No. N02000007015

Dear Filing Clerk:

Enclosed are Amended and Restated Articles of Incorporation for the referenced Florida Non-Profit corporation, together with a copy of your letter dated April 23, 2003. We have complied with the directions in your letter and have included a certificate to accompany the restated articles. These articles will replace the ones previously filed with you. Upon filing, please send us a certified copy of the filed Amended and Restated Articles to the above address. Our firm's check No. 15785 in the amount of \$44.75 for the filing fee and for the certified copy of the amendment was sent to you on April 17, 2003.

Thank you for your attention to this matter.

Sincerely,



Mary Lu Miller, CLA
Paralegal to David L. Smith, Esq.

/mlm
Enclosures



FLORIDA DEPARTMENT OF STATE

Glenda E. Hood
Secretary of State

April 23, 2003

MARY LU MILLER, CLA
GRAY HARRIS ATTORNEYS AT LAW
PO BOX 3324
TAMPA, FL 33601

SUBJECT: CAPE HAZE MARINA BAY COMMUNITY ASSOCIATION, INC.
Ref. Number: N02000007015

We have received your document for CAPE HAZE MARINA BAY COMMUNITY ASSOCIATION, INC. and your check(s) totaling \$44.75. However, the enclosed document has not been filed and is being returned for the following correction(s):

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.

The word "initial" or "first" should be removed from the article regarding directors, officers, and/or registered agent, unless these are the individuals originally designated at the time of incorporation.

The document must be signed by the chairman, any vice chairman of the board of directors, its president, or another of its officers.

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) 245-6880.

Karen Gibson
Document Specialist

Letter Number: 203A00024686

RECEIVED
03 MAY 27 AM 9:48
DIVISION OF CORPORATIONS

ARTICLES OF RESTATEMENT OF THE
ARTICLES OF INCORPORATION

FILED
03 MAY 27 AM 9:44
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to F.S. §617.1007, this corporation adopts the following articles of restatement to its articles of incorporation as follow:

1. The name of the corporation before and after restatement:
CAPE HAZE MARINA BAY COMMUNITY ASSOCIATION, INC.
2. The text of the amended and restated articles of incorporation are attached hereto.
3. The restated articles of incorporation do not contain an amendment to the articles of incorporation requiring member approval. The restatement was adopted by the directors.
4. The date of adoption of the restated articles of incorporation was:
MAY 16, 2003
5. These articles of restatement will be effective upon filing.

Date: May 16, 2003


James Beach, Director and Treasurer

AMENDED AND RESTATED ARTICLES OF INCORPORATION

of

CAPE HAZE MARINA BAY COMMUNITY ASSOCIATION, INC.

a Florida corporation not-for-profit

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03 MAY 27 AM 9:44
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

- I. **NAME OF CORPORATION:** The name of this corporation shall be CAPE HAZE MARINA BAY COMMUNITY ASSOCIATION, INC. (hereinafter "Association").
- II. **PURPOSES:** The general nature, objects and purposes of the Association are:
 - A. To accept and hold title to, and thereafter to manage and administer the use of the common areas of that certain property to be known as "CAPE HAZE MARINA VILLAGE" (hereinafter the "Development"), which property is located at 8600 Esther Street, Englewood, Charlotte County, Florida, and more particularly described in that certain document entitled "Amended and Restated Community Declaration of General Protective Covenants and Restrictions for Cape Haze Marina Village" (hereinafter "Declaration") which have been recorded in the Public Records of Charlotte County, Florida, and as the same may be amended from time to time. The corporation's principal office and mailing address is c/o Triple Diamond Enterprises, LLC, 3439 Technology Drive, Suite 4, Nokomis, Florida 34275.
 - B. To manage, operate, maintain and control the usage of all land and water areas and improvements intended for the common usage of all owners of land in the development including, without limitation, such private roads, sidewalks, pedestrian, bicycle and other pathways, lakes, ponds, waterways, parks, landscaping, conservation areas and, other similar common areas (and the improvements thereon) as may be set aside or transferred from time to time to the Association for the common use and benefit of all owners in the development, which areas are hereinafter collectively referred to the "Common Areas".
 - C. To take such action as may be deemed appropriate to promote the health, safety and social welfare of the owners of property within the Development.
 - D. To provide, purchase, acquire, replace, improve, maintain and repair all improvements of the common areas including, without limitation, buildings, structures, streets, sidewalks, street lighting, landscaping, equipment, furniture and furnishings, both real and personal, related to the promotion of the health, safety and social welfare of the owners of property in the development as the Board of Directors in its discretion may determine necessary or appropriate.
 - E. To furnish or otherwise provide for private security, fire protection and such other services as the Board of Directors in its discretion determines necessary or appropriate, and to provide the capital improvements and equipment related thereto.

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- F. To undertake and carry out all of the duties and obligations which may be assigned to it as the Community Association under the terms and provisions of the Declaration or any declarations of restrictions or deed restrictions applicable to subdivided portions of the development.
 - G. To operate without profit and for the sole and exclusive benefit of the owners of property in the Development.

III. GENERAL POWERS: The general powers that the Association shall have are as follows:

- A. To purchase, accept, lease or otherwise acquire title to, and to hold, mortgage, rent, sell or otherwise dispose of any and all real or personal property related to the purposes of activities of the Association; to make, enter into, perform and carry out contracts of every kind and nature with any person, firm, corporation or association; and to do any and all other acts necessary or expedient for carrying on any and all of the activities of the Association and pursuing any and all of the objects and purposes set forth in the Declaration, these Articles of Incorporation and not forbidden by the laws of the State of Florida.
- B. To establish a budget and to fix assessments to be levied against the assessable property in the Development pursuant to the aforementioned Declaration for the purpose of defraying the expenses and costs of effectuation the objects and purposes of the Association and to create reasonable reserves for such expenditures, including a reasonable contingency fund for the ensuing year and a reasonable annual reserve for anticipated major capital repairs, maintenance and improvement, and capital replacements.
- C. To enter into agreements with the Neighborhood Associations, as that term is defined in the Declaration, for the collection of such assessments.
- D. To place liens against any property subject to assessment in the Development for delinquent and unpaid assessments and to bring suit for the foreclosure of such liens or to otherwise enforce the collection of such assessments for the purpose of obtaining revenue for the operation of the Association's business.
- E. To hold funds solely and exclusively for the benefit of the owners of property in the Development for the purposes set forth in the Declaration and these Articles of Incorporation.
- F. To adopt, promulgate and enforce rules, regulations, bylaws, covenants, restrictions and agreements in order to effectuate the purposes for which the Association is organized.
- G. To delegate such of the powers of the Association as may be deemed to be in the Association's best interest by the Board of Directors.

- H. To charge recipients of service rendered by the Association and users of property of the Association where such is deemed appropriate by the Board of Directors.
- I. To pay all taxes and other charges or assessments, if any, levied against property owned, leased or used by the Association.
- J. To borrow money for the acquisition of property or for any other lawful purpose of the Association, and to make, accept, endorse, execute and issue debentures, promissory notes or other obligations of the Association for borrowed monies, and to secure the payment of such obligation by mortgage, pledge, security agreement, or other instrument of trust, or by lien upon, assignment of or agreement in regard to all or any part of the real or personal property, or property rights or privileges, of the Association wherever situated.
- K. To enforce by any and all lawful means the provisions of these Articles of Incorporation, the Bylaws of the Association which may be hereafter adopted, the terms and provisions of the aforesaid Declaration and wherever applicable or appropriate, the terms and provisions of any restrictions applicable to any portion of the development.
- L. In general, to have all powers which are or may be conferred upon a corporation not for profit by the laws of the State of Florida, except as prohibited herein.

IV. MEMBERS:

- A. The members of this Association shall consist of all owners of units, lots, or parcels included within the assessable property, which property is more particularly described and defined in the aforementioned Declaration. There shall be two classes of such members, as follows:
 - 1. Class A Members: Class A members shall be all owners of units in the development, and all owners of lots or other parcels of property which are located in an area where membership in a Neighborhood Association is required. Class A members shall be represented in all matters concerning the Association by a representative of the Neighborhood Association to which they belong. Owners of all such property shall automatically become Class A members upon acquiring the fee simple title to said property.
 - 2. Class B Members: The Class B members shall be the Developer.
- B. Membership of any Class A member in the Association shall automatically terminate upon conveyance or other divestment of title to such member's unit, lot or parcel, except that nothing contained herein shall be construed as terminating the membership of any member who may own two or more units, lots or parcels in the Development so long as at least one unit, lot or parcel is owned by such member.

- C. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:
 - 1. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or
 - 2. On January 1, 2018, or such earlier date as Developer, in its sole discretion, establishes by recorded instrument executed by Developer.
- D. The interest 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 unit, lot or parcel that is the basis of his membership in the Association.

V. VOTING:

- A. Subject to the restrictions and limitations hereinafter set forth, each Class A member of the Association shall have one (1) vote for each property unit subject to assessment, as described in the Declaration; provided, however, that in the event of multiple ownership of any property, the members/owners thereof together, and not individually, shall be entitled to one (1) vote for each such assessment share. The Class B Membership shall be entitled to four and one half (4.5) votes for each property unit held by such member. Except as may be otherwise provided herein, Class A and Class B members shall vote as a combined class so that no matter shall require the separate approval of the Class A and Class B members.
- B. Class A members shall be represented in this Association solely and exclusively by the Neighborhood Associations to which they belong, through the president of their respective Neighborhood Association or through such other representative as the Neighborhood Association's board of directors may appoint. Each Neighborhood Association in the Development shall represent its members with respect to all Association matters and shall have that number of votes to cast corresponding to the total number of votes held by its individual members according to the provisions hereof. All notices and other official communications from the Association to the Neighborhood Associations shall be to their respective presidents or other designated representatives. Only the presidents or other designated representatives shall have the right to cast votes and otherwise participate in membership meetings of the Association, although any member shall have the right to attend such meetings.
- C. The Class B members may represent themselves at all membership meetings of the Association and shall have the right to cast that number of votes corresponding to the total number of votes held by each as Developer according to the provisions hereof and the Declaration, and otherwise participate in membership meetings of the Association. All notices and other official communications from the Association to any and all Developers shall be to its or their president or other designated representative.

- D. The Secretary of the Association shall maintain a list of the members of the Association and the number of votes to which each member is entitled as determined in the manner set forth herein. Whenever any person or entity becomes entitled to membership in the Association, it shall become such party's duty and obligation to so inform the Secretary in writing, giving his name, address and legal description of such unit, lot or parcel; provided, however, that any notice given to or vote accepted from the prior owner of such unit, lot or parcel before receipt of written notification of change of ownership shall be deemed to be properly given or received. The secretary may, but shall not be required to, search the Public Records of Charlotte County or make other inquiry to determine the status and correctness of the list of members of the Association maintained by him and shall be entitled to rely upon the Association's records until notified in writing of any change in ownership.

VI. BOARD OF DIRECTORS:

- A. The affairs of the Association shall be managed by a Board of Directors consisting of four (4) Directors. Cape Haze Marina Bay, LLC, a Florida limited liability company ("CHMB") and The Pure Guava Trading Company, Inc., a Florida corporation ("Pure Guava"), as successors-in-interest to Cape Haze Marina Village, Inc. are the Developers with the right to appoint Directors. Two (2) of the four (4) Directors shall be appointed by CHMB and two (2) shall be appointed by Pure Guava. CHMB and Pure Guava will share control of the Association until Pure Guava has sufficient assurances of its ability to complete development and sales of its units. Pure Guava's status as co-developer will cease when its buildings are built. At that point, the number of Directors comprising succeeding Boards of Directors shall be as provided from time to time in the Declaration, but in no event shall there be less than three (3) or more than nine (9) Directors. The Directors need not be members of the Association or residents of the State of Florida.
- B. All Directors shall be appointed by and shall serve at the pleasure of the respective Developer, its successors or assigns as described in VI.A. above. At the time the total vote outstanding in the Class A membership exceeds the total votes outstanding in the Class B membership, any Developer shall be entitled to elect a number of directors of the Association equal to the percentage of votes held by the Developer times the total number of directors, rounded to the nearest whole number greater than zero. Notwithstanding the foregoing, as long as CHMB owns any property in the development, CHMB, as Developer shall have the right to appoint one (1) Director and Pure Guava shall maintain one (1) Director until it is no longer a Developer.
- C. All Directors who are not subject to appointment by Developer shall be elected by the combined vote of the Class A and Class B members. Elections shall be by plurality vote.

-
- D. All Directors, whether appointed or elected, shall serve for terms of one (1) year. Any elected Director may be removed from office with or without cause by majority vote of the Class A and Class B members but not otherwise. In no event may a Board member appointed by a Developer be removed except by action of the appointing Developer.
- F. The names and addresses of the members of the Board of Directors who shall hold office until the first annual meeting of members and until their successors are elected or appointed and have qualified, are as follows:

David Arp	Post Office Box 1967 Nokomis, FL 34274
James Beach	Post Office Box 1967 Nokomis, Florida 34274
Terry Keathley	Post Office Box 83 Placida, Florida 33946
Nancy Hunt	Post Office Box 5284 Grove City, Florida 34224

VII. OFFICERS:

- A. The officers of the Association, to be elected by the Board of Directors, shall be a President, a Vice President, a Secretary, and a Treasurer, and such other officers as the Board shall deem appropriate from time to time. The President shall be elected from among the membership of the Board of Directors, but no other officer need be a Director. The same person may hold two or more offices, provided, however, that the office of President and Secretary (or Assistant Secretary) shall not be held by the same person. The affairs of the Association shall be administered by such officers under the direction of the Board of Directors. Officers shall be elected for a term of one (1) year in accordance with the procedure set forth in the Bylaws.
- B. The Board of Directors, or the President with the approval of the Board of Directors, may employ personnel to conduct the affairs of the Association, and any such person or legal entity may be so employed without regard to whether such person or entity is a member of the Association or a Director or officer of the Association, as the case may be.
- C. The names of the officers who are to manage the affairs of the Association until the first annual meeting of the Board of Directors and until their successors are duly elected and qualified, are as follows:
1. President: Terry Keathley
 2. Vice President: David Arp

3. Secretary: Nancy Hunt
4. Treasurer: James Beach

VIII. CORPORATE EXISTENCE: The Association shall have perpetual existence.

IX. BYLAWS: The Board of Directors of the Association shall adopt Bylaws consistent with these Articles and the Declaration. Thereafter, the Bylaws may be altered, amended or rescinded by a majority vote of the directors in the manner provided by such Bylaws so long as they are not inconsistent with the Declaration.

X. AMENDMENT TO ARTICLES OF INCORPORATION: These Articles may be altered, amended or repealed by resolution of the Board of Directors. No amendment affecting the rights of any Developer shall be effective without the prior written consent of such Developer.

XI. REGISTERED OFFICE AND REGISTERED AGENT: The registered office of the corporation shall be c/o Triple Diamond Enterprises, LLC, 3439 Technology Drive, Suite 4, Nokomis, Florida 34275, and the registered agent at such address shall be James Beach, Esq. The Corporation may, however, maintain offices and transact business in such other places within or without the State of Florida as may from time to time be designated by the Board of Directors.

XII. BUDGET AND EXPENDITURES: The Board of Directors shall annually adopt a budget for the operation of the Association for the ensuing year and for the purpose of levying assessments against all assessable property in the Development, which budget shall be conclusive and binding upon all persons; provided, however, that the Board of Directors may hereafter at any time approve or ratify variations from such budget.

XIII. SUBSCRIBERS: The names and street addresses of the subscribers of these Articles are as follows:

James Beach, Esq.

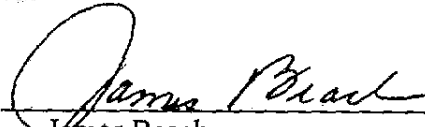
Triple Diamond Enterprises, LLC
3439 Technology Drive, Suite 4
Nokomis, Florida 34275

XIV. INDEMNIFICATION OF OFFICERS AND DIRECTORS: All officers and Directors shall be indemnified by the Association for and against all expenses and liabilities, including counsel fees (including appellate proceedings), reasonably incurred in connection with any proceeding for settlement thereof in which they may become involved by reason of holding such office. In no event, however, shall any officer or Director be indemnified for his own willful misconduct or, with respect to any criminal proceeding, his own knowing violation of any provision of law. The Association may purchase and maintain insurance on behalf of all officers and Directors for any liability asserted against them or incurred by them in their capacity as officers and directors or arising out of their status as such.

XV. DISSOLUTION OF THE ASSOCIATION:

- A. Upon expiration of the terms of the aforementioned Declaration, the Association may be dissolved upon a resolution to that effect being approved by two-thirds (2/3) of the members of the Board of Directors, and, if a judicial decree is necessary at the time of dissolution, then after receipt of an appropriate decree as provided for in Section 617.05, Florida Statutes (1979), or any statute of similar import then in effect.
- B. Upon dissolution of the Association, all of its assets remaining after provision for payment of creditors and all costs and expenses of such dissolution shall be distributed in the following manner:
1. Any property determined by the Board of Directors of the Association to be appropriate for dedication to any applicable municipal or other governmental authority may be dedicated to such authority provided the authority is willing to accept the dedication.
 2. All remaining assets, or the proceeds from the sale of such assets, shall be distributed among the Class A and Class B members in proportion to the number of votes each such member then has.


IN WITNESS WHEREOF, the aforesaid subscribers have hereunto set their hands and seals this 16th day of May, 2003.


James Beach

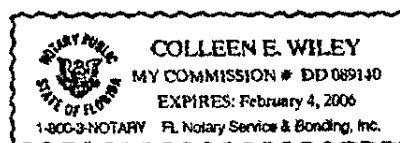
STATE OF FLORIDA

COUNTY OF SARASOTA

SWORN TO AND SUBSCRIBED before me this 16th day of May, 2003,
by James Beach, who is personally known to me.


NOTARY PUBLIC
Print Name: Colleen E. Wiley

(Seal)




**CERTIFICATE DESIGNATING A REGISTERED AGENT
AND REGISTERED OFFICE FOR THE SERVICE OF PROCESS**

In compliance with Section 48.091, Florida Statutes, the following is submitted:

CAPE HAZE MARINA BAY COMMUNITY ASSOCIATION, INC., a Florida corporation not-for-profit, desiring to organize under the laws of the State of Florida with its principal office, as indicated in the articles of incorporation at Port Charlotte, County of Charlotte, State of Florida, has designated James Beach, Esq., whose street address is Triple Diamond Enterprises, LLC, 3439 Technology Drive, Suite 4, Nokomis, Florida 34275, as its agent to accept service of process within this state.

ACCEPTANCE

Having been designated as agent to accept service of process for the above-named corporation, at the place stated in this certificate, I hereby agree to act in this capacity and to comply with the provision of said law relative to same.



JAMES BEACH