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N03233

Reply To:

Fort Myers Office or
jadams@becker-poliakoff.com

March 7, 2002

Department of State
Division of Corporations
Attn: Amendments
P.O. Box 6327
Tallahassee, FL 32314

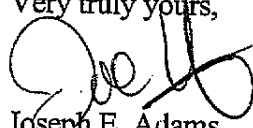
Re: Section 23, Property Owner's Association, Inc.
Document No. N03233

Dear Sir or Madam:

Enclosed please find Restated Articles of Incorporation for the above referenced Association, as well as check number 5035 in the amount of \$35.00 to cover the cost of filing.

Please return a copy of same in the envelope provided herein for your convenience.
Thank you for your attention to this matter.

Very truly yours,


Joseph E. Adams
For the Firm

JEA/adc
Enclosure (as stated)
180269_1.DOC

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-03/19/02--01032--003
*****35.00 *****35.00

FILED
02 MAR 19 PM 10:45
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

N03233
3-19-02
Amended + Restated
1378 au

CM pol
KB
5/25/02

**RESTATED ARTICLES OF INCORPORATION
SECTION 23, PROPERTY OWNER'S ASSOCIATION, INC.**

PUNTA GORDA ISLES, SECTION 23 ("PGI SECTION 23") is described in Plat Book 12, Pages 2A - 2Z-41, Public Records of Charlotte County, Florida.

Section 23, Property Owner's Association, Inc. ("Association"), is a homeowners association under Section 720.301 *et seq.*, Florida Statutes (2001), and is a Florida Not For Profit Corporation pursuant to Chapter 617, Florida Statutes (2001); and

WHEREAS, Association was the defendant in that certain action styled: *IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR CHARLOTTE COUNTY, FLORIDA, CIVIL ACTION, CASE NO. 01-141-CA, KENNETH F. BARNES, Plaintiff, vs. SECTION 23 PROPERTY OWNER'S ASSOCIATION, INC., Defendants*; and

WHEREAS, by Order dated September 25, 2001 ("the Court Order"), the Court ruled that certain aspects of the 1997 amendments to Article IV(b) of the Articles of Incorporation which were filed with the Secretary of State on December 2, 1997 at Document N03233. were *void ab-initio*; and

WHEREAS, the following provisions of Article IV(b) of the Amended and Restated Articles of Incorporation deemed *void ab-initio* provides as follows:

Voting shall be in person or by absentee ballot only... proxy voting are [is] prohibited; and

WHEREAS, the correction to Article IV(b) of the Amended and Restated Articles of Incorporation does not need to be voted on by the members of the Association and it was declared *void ab-initio* by a Court of competent jurisdiction; and

NOW THEREFORE, Association places record notice of the following:

1. The Court Order is attached as Exhibit "1" to these Restated Articles of Incorporation for record notice.
2. The Restated Articles of Incorporation are attached as Exhibit "2" to these Restated Articles of Incorporation for record notice.

WITNESSES:
(TWO)

Gladwin Thomas
Signature
Gladwin THOMAS
Printed Name

Sandra Howard
Signature
SANDRA Howard
Printed Name

SECTION 23, PROPERTY OWNER'S ASSOCIATION, INC.

BY: MaryLou Gleeson, President
MaryLou Gleeson, President

Date: 2/28/02

(CORPORATE SEAL)

Attest: Teresa Boucher
Teresa Boucher, Secretary

STATE OF FLORIDA)
) SS:
COUNTY OF CHARLOTTE)

The foregoing instrument was acknowledged before me this 28 day of February, 2002 by MaryLou Gleeson as President of Section 23, Property Owner's Association, Inc., a Florida Corporation, on behalf of the corporation. She is personally known to me or has produced (type of identification) _____ as identification and did take an oath.



Teresa Lynn Boucher
Commission # GG 912373
Expires Feb. 21, 2004
Bonded Thru
Atlantic Bonding Co., Inc.

Teresa Lynn Boucher
Notary Public
TERESA LYNN BOUCHER
Printed Name

My commission expires: 2/21/04

173735_1.DOC

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR
CHARLOTTE COUNTY, FLORIDA, CIVIL ACTION
KENNETH F. BARNES,

Plaintiff,

vs.

Case No. 01-141-CA

SECTION 23 PROPERTY
OWNER'S ASSOCIATION, INC.,

Defendant.

FINAL JUDGMENT FOR PLAINTIFF

This cause came before this Court for trial on September 5, 2001 and the Court having reviewed all documents moved into evidence, stipulation of facts by counsel and all proffered evidence, oral argument of counsel and the Trial Memorandums submitted by counsel and being otherwise duly advised of the premises and law, the Court finds and rules as follows:

FINDINGS OF FACTS

1. That the Declaration of Restrictions for the subject community lying in Section 23 was first recorded on July 11, 1972 and;
2. That Articles of Incorporation for Section 23 Property Owner's Association were filed with the Secretary of State on or about May 22, 1984 creating the Defendant homeowner's association to govern this community.
3. In 1992, the Substantial Rewording of By-Laws was adopted by the Board of Directors pursuant to Article 8 of the Articles of Incorporation which provided that the first By-Laws of the corporation shall be adopted by the Board of Directors and further

provided that the first By-Laws may be altered, amended, or amended by the Board of Directors.

4. In 1997, prior to the Amended and Restated Articles of Incorporation and Amended and Restated By-Laws, there was an amendment made to the Declaration of Restrictions adopting and containing a provision which provided there would be no voting by proxy.

5. In 1997, the Amended and Restated Articles of Incorporation and the Amended and Restated By-Laws were adopted.

6. There were subsequent amendments thereafter to the Amended and Restated Articles of Incorporation and Amended and Restated By-Laws.

7. The Defendant homeowner's association is governed by Chapter 720 as a Florida corporation, responsible for the operation of a community or a mobile home subdivision in which voting membership is made up of the parcel owners and membership is a mandatory condition of ownership. The community is defined as the real property subject to the recorded declaration of covenants which is defined as a written, recorded instrument in the nature of covenants running with the land which subjects the land comprising the community to the jurisdiction and control of an association in which the owners of the parcels must be members.

8. Governing documents are defined in Chapter 720 to be the recorded Declaration of Covenants and the Articles of Incorporation and By-Laws of the association along with duly adopted amendments to the Articles of Incorporation and By-Laws.

9. Defendant in support of its position that the Amended and Restated By-Laws were duly adopted in accordance with the governing instruments, relies upon application of Article 8 of the original Articles of Incorporation

10. The Substantial Rewording of By-Laws, see By-Laws for present text, were adopted in 1992, almost ten years after the corporation was incorporated and shortly before the transfer of control by the developer to the association.

11. The Plaintiff by the preponderance of the evidence has shown that the Substantial Rewording of By-Laws were not the initial or first By-Laws of the Defendant corporation.

12. The Substantial Rewording of By-Laws is consistent with the transfer of control to the association and the title is an unusual title and would not normally be found upon By-Laws that were the first or initial By-Laws.

13. Defendant does not dispute that the Amended and Restated By-Laws were not adopted in accordance with the requirements set forth in paragraph 8 (b) of the Substantial Rewording of By-Laws.

14. Florida Statute 617.1002 provides the procedure for amending Articles of Incorporation providing unless the Articles of Incorporation provide an alternative procedure, the amendment to the Articles of Incorporation must be in the manner provided by statute.

15. The original Articles of Incorporation in sections 9.2 and 9.3 provide an alternative procedure for amendment.

16. The Court must determine in this matter whether proxy voting was voting right.

17. Voting interest is defined by Florida Statutes Chapter 720 to mean the voting rights distributed to the members which in this case is one vote per lot.

18. Florida Statute 720.301 (11) voting interests refers to the number of votes and is not synonymous with or necessarily inclusive of all voting rights.

19. Proxy voting is defined in Florida Statute 720.306 (6) as a voting right.

20. The Court finds proxy voting cannot be eliminated without complying with the procedures set forth in the original Articles of Incorporation, Section 9.3.

21. The Court finds the Amendments to the Declaration of Restrictions is not determinative of the issue by its inclusion of the provision no voting by proxy.

22. The Court finds that the Plaintiff has not waived and is not estopped or barred by laches from asserting these issues in a declaratory judgment.

ORDERS OF THE COURT

Now, therefore, based upon the evidence and foregoing findings this Court hereby holds as follows, to wit:

ORDERED AND ADJUDGED that the portion of Article IV (b) of the Amended and Restated Articles of Incorporation prohibiting proxy voting is void ab-initio.

ORDERED AND ADJUDGED that the Amended and Restated By-Laws of Section 23 Property Owner's Association, Inc. dated December 8, 1997 and recorded at Charlotte County O.R. Book 1576, Page 1258, thru Page 1270 are void ab-initio.

ORDERED AND ADJUDGED that the Amendment to the By-Laws of PGI Section 23 Property Owner's Association, Inc. dated February 23, 1998 and recorded in Charlotte County O.R. Book 1592, Page 0658 is void ab-initio.

ORDERED AND ADJUDGED that the Section 23 Property Owner's Association, Inc., Amendment to the By-Laws dated June 17, 1999 recorded at Charlotte County O.R. Book 1718, Page 2139 is void ab-initio.

ORDERED AND ADJUDGED that the Section 23 Property Owner's Association, Inc. Amendment to the By-Laws dated June 17, 1999 and recorded at Charlotte County O.R. Book 1718, Page 2140 is void ab-initio.

ORDERED AND ADJUDGED that the Section 23 Property Owner's Association, Inc. Amendment to the Amended and Restated By-Laws of Section 23 dated November 25, 1999 and recorded at Charlotte County O.R. Book 1745, Page 2098 is void ab-initio.

ORDERED AND ADJUDGED that Plaintiff, Kenneth F. Barnes, is the prevailing party in this litigation and entitled to recover reasonable attorney's fees and costs and the Court reserves jurisdiction for the purposes of awarding reasonable attorney's fees and costs upon the appropriate motion of the Plaintiff.

DONE AND ORDERED in Chambers in Charlotte County, Punta Gorda, Florida, this 25 day of Sept, 2001.

/S/ HON. SHERRA WINESETT

The Honorable Sherra Winesett
Circuit Court Judge

cc: Michael R. Whitt, Esquire
Darol H.M. Carr, Esquire

#75360

DEBORAH L. HAMSHARIE
JUDICIAL ASSISTANT

9/25/01

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF THE**

**SECTION 23, PROPERTY OWNER'S ASSOCIATION, INC.
(A Florida corporation not for profit)**

FILED
02 MAR 19 AM 10:45
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

THE BOARD OF DIRECTORS hereby associate themselves as the elected representatives of the members of the Section 23, Property Owners Association, Inc., and do hereby duly adopt these amended and restated Articles of Incorporation on behalf of the Association membership.

ARTICLE I

NAME

The name of the corporation shall be Section 23, Property Owner's Association, Inc., which is also referred to herein as PGI Section 23 or as the "Association" for convenience.

ARTICLE II

PRINCIPAL PLACE OF BUSINESS

The principal place of business and mailing address of PGI Section 23, Property Owner's Association, Inc., shall be, 26217 Rampart Boulevard, Punta Gorda, Florida, 33983.

ARTICLE III

PURPOSES

The general purpose(s) for which the corporation is organized are to; promote the general welfare, health and safety of the property owners; assure that the common properties, i.e., greenbelts, waterways, lakes, swales, easements and other common areas re maintained; review plans and specifications for new constructions, additions and renovations and assure that these meet established standards of design, appearance and location; compel observance of the deed restrictions and conduct day to day business associated with managing and providing services to the community as may be imposed by the membership within the framework of the Declaration of Restrictions, the Bylaws, the laws of Charlotte County and the State of Florida.

ARTICLE IV

MEMBERS

(a) **Membership in the Association.** Every fee simple owner of a parcel of land in PGI Section 23, Charlotte County, Florida shall be a member of the Association.

(b) **Voting Rights.** Each parcel owner shall be entitled to one vote for each parcel owned. The term parcel shall include lots and tracts and if a parcel is owned by more than one person or entity, such owners shall

designate one of their members as the voting member, and shall give the Association notice in writing of the owners so selected. Failure on the part of the multiple owners of a single parcel to appropriately notify the Association of the name of the voting member, shall result in the loss of the vote for that particular parcel until such time as the required notice is given to the Association. Fractional voting and accumulative voting are prohibited.

(c) **Sale or Transfer.** A member(s) of the Association who sells or transfers ownership of a parcel in PGI Section 23, shall cease to be a member of the Association if that member owns no other parcel(s) in PGI Section 23, and the membership shall be transferred to the new owner when the deed or other instrument of conveyance has been recorded in the Public Records of Charlotte County, Florida, and a certified copy thereof furnished the Association. A members share in the assets, privileges and rights as a member of the Association cannot be assigned, pledged or transferred in any manner, except as an appurtenance to a parcel, and shall be so transferred as an appurtenance to the parcel on the sale or transfer of the parcel ownership as outlined therein.

ARTICLE V

DIRECTORS

(a) **Requirements.** The affairs of the Association will be managed by an elected Board of Directors consisting of the number of directors as set forth in the Bylaws, but not less than five (5) directors, and in the absence of such determination shall consist of five (5) directors. Directors must be members of the Association, serve on the Board without compensation and may not be employed by the Association.

(b) **Election and Removal.** Directors shall be elected by the voting members of the Association, at the annual meeting, in the manner set forth in the Bylaws and shall continue to serve until their successors have been elected or they may be named by unanimous consent of the remaining directors to fill a vacancy until the next election. Directors may be removed and the vacancies created on the Board of Directors filled in the manner set forth in the Bylaws.

(c) **Officers.** The members of the Board of Directors shall elect a President, Vice President, Treasurer and such other officers as may be stipulated in the Bylaws or necessitated by events. The officers shall be elected annually at the organizational meeting, to be held within ten (10) days after the annual meeting said officers shall serve until their successors are elected.

(d) **Disclosure.** An officer or director shall make full disclosure of any interest in any matter that shall come before the Board of Directors and if such interest is or may become in conflict with the interest of the Association, said officer or director shall reclude himself or herself from any consideration of such matter. A contract or transaction between the Association and one or more of its officers or directors or between the Association and another corporation, partnership, association or organization in which said officer(s) or director(s) has a financial interest may be invalid, void or voidable solely for that reason or solely because of the officer(s) or director(s) is present at or participates in the meeting of the board or committee which authorizes such contracts or transactions or solely because their votes are counted for such purpose. No officer or director shall incur liability by reason that he or she is or may be interested in any such contract or transaction.

ARTICLE VI

CORPORATE POWERS

The Association shall be vested with all the common law and statutory powers and authority granted to corporations not-for-profit and such future powers of enforcement as may hereafter and in the future be authorized by the membership, to carry out the duties and responsibilities of the Section 23, Property Owner's Association, Inc., as set forth in the foregoing Article III of these Articles of Incorporation, the Bylaws, the Declaration of Restrictions, Single Family as amended and the Declaration of Restrictions Multi-Family, as amended, through the Board of Directors.

ARTICLE VII

INDEMNIFICATION

Every director and every officer of the Association shall be indemnified, saved and held harmless by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon them as directors and officers to which they may be a party, or in which they may become involved by reason of being or having been a director or officer of the Association, whether or not they are director or officer at the time such expenses are incurred, except when the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of duties considered to be Board of Directors' business; provided that in the event of a settlement the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not operate to the exclusion of any and all other rights to which the director or officer may be entitled.

ARTICLE VIII

BYLAWS

The Board of Directors shall adopt Bylaws consistent with these Articles of Incorporation and may alter, amend or rescind said Bylaws. The Bylaws may contain provisions for the regulation and management of the affairs of the Corporation not inconsistent with the Declaration of Restrictions or Corporate Law.

ARTICLE IX

AMENDMENTS

Amendments to the Articles of Incorporation shall be proposed and adopted in the following manner.

(a) Written notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered and such notice shall be delivered to each voting member at least thirty (30) days, but not more than sixty (60) days prior to the meeting.

(b) A resolution for the adoption of an amendment may be proposed either by the Board of Directors or by the voting members of the Association. Directors and voting members not present in person at a meeting when an amendment is under consideration, may express their approval or opposition in writing provided written

notice of such approval or opposition is delivered to the Secretary at or prior to the meeting. Resolutions proposing the adoption of amendments must be adopted by not less than two-thirds of the total votes cast by voting members present at the meeting when said resolution is presented for a vote.

(c) No amendment shall make any change in the qualifications for membership or the voting rights of members, without the approval of all the members of the Association in good standing. No amendment shall be made that is in conflict with the law or the Declaration of Restrictions as amended from time to time, except that all governing documents shall be amended to remain consistent with these Articles of Incorporation.

(d) The Section 23, Property Owner's Association, Inc., as the successors to Punta Gorda Isles, Inc., shall have the absolute right to amend these Articles of Incorporation. A copy of each amendment shall be filed with the Secretary of State of the State of Florida and shall be recorded in the Public Records of Charlotte County, Florida.

ARTICLE X

TERM

The term of the Section 23, Property Owner's Association, Inc., shall be perpetual.

ARTICLE XI

SUBSCRIBERS

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

William G. Cone	25170 Obelisk Court Punta Gorda, FL 33983
Gladwin O. Unrau	26036 Luzon Court Punta Gorda, FL 33983
Henry A. James	25435 Panache Lane Punta Gorda, FL 33983
Robert V. Bracken	1346 Neopolitan Road Punta Gorda, FL 33983
Mary E. Renfer	2432 Greenland Court Punta Gorda, FL 33983

ARTICLE XII

INCORPORATORS

Punta Gorda Isles, Inc., a Florida Corporation registered under the Business Corporation Act, Chapter 607, Florida Statutes, located at 1625 West Marion Avenue, Punta Gorda, Florida, 33950, and the developer of

PGI Section 23, did file the appropriate affidavits that were recorded with the Department of State, Division of Corporations, on May 22, 1984 to incorporate the Section 23, Property Owner's Association, Inc., is the sole incorporator of Section 23, Property Owner's Association, Inc.

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