

Amended
Restated
@ 8/5/09

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POLIAKOFF**

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August 17, 2009

Reply To:
Naples
Gregory W. Marler, Esq.
GMarler@becker-poliakoff.com

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

**Re: The Breakwater Commons Association, Inc. / Articles of
Amendment**

Dear Sir or Madam:

Enclosed please find Articles of Amendment to Articles of Incorporation for the above-referenced Corporation, together with check number 003417 in the amount of \$35.00 to cover the cost of filing.

Please return a filed copy of the document to my attention. An extra copy of the document is enclosed herewith for your use.

Thank you for your attention to this matter.

Very truly yours,



Gregory W. Marler
For the Firm

GWM/jcm
Enclosure (as stated)

ACTIVE: 2639949_1

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* by appointment only

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

Pursuant to the provision of Section 617, Florida Statutes, the undersigned corporation adopts the following Articles of Amended and Restated Articles of Incorporation.

FIRST: The name of the corporation is The Breakwater Commons Association, Inc.

SECOND: The attached Amended and Restated Articles of Incorporation were adopted by the membership.

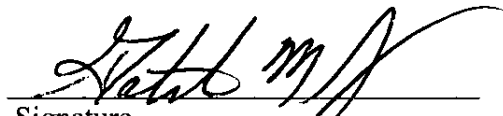
THIRD: The attached Amended and Restated Articles of Incorporation were adopted by the required vote of the members on the 25th day of June, 2009.

FOURTH: The number of votes cast were sufficient for approval.

WITNESSES:

**THE BREAKWATER COMMONS
ASSOCIATION, INC.**

(TWO)


Signature
Patrick M. Jones
Printed Name

BY: 
Michael Pilgrim, President

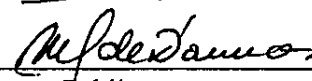
Date: 8/14/09

(CORPORATE SEAL)


Signature
Marguerite Brudenbaker
Printed Name

STATE OF FLORIDA)
)SS:
COUNTY OF COLLIER)

The foregoing instrument was acknowledged before me this 14 day of Aug, 2009 by **Michael Pilgrim** as President of **The Breakwater Commons Association, Inc.**, a Florida Corporation, on behalf of the corporation. He/She is personally known to me.


Notary Public

Printed Name Maria Luisa De Armas
Commission # DD454608
Expires: OCT. 18, 2009
Bonded Thru Atlantic Bonding Co., Inc.

My commission expires:

FILED
STATE
SECRETARY OF FLORIDA
TALLAHASSEE, FLORIDA
09 AUG 20 PM 4: 20

AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

THE BREAKWATER COMMONS ASSOCIATION, INC.

These are the Amended and Restated Articles of Incorporation for THE BREAKWATER COMMONS ASSOCIATION, INC., originally filed with the Florida Department of State the 8th day of February, 1996, under Charter Number N96000000695. Matters of only historical interest have been omitted. Amendments included have been added pursuant to F.S. 617.

1. NAME. The name of the corporation shall be THE BREAKWATER COMMONS ASSOCIATION, INC. For convenience, the corporation shall be referred to in this instrument as the "Association;" the Declaration of Covenants, Conditions and Restrictions for The Breakwater Commons, the Declaration of Condominium for The Breakwater at Pelican Bay I, a Condominium, the Declaration of Condominium for The Breakwater at Pelican Bay II, a Condominium, the Declaration of Condominium for The Breakwater at Pelican Bay III, a Condominium, the Declaration of Condominium for The Breakwater at Pelican Bay IV, a Condominium, and the Declaration of Condominium for The Breakwater at Pelican Bay V, a Condominium, as "Declarations;" these Articles of Incorporation as the "Articles;" and the Bylaws of the Association as the "Bylaws."

2. PURPOSE. The purpose for which the Association is organized is to manage, operate and maintain the Condominiums known as The Breakwater at Pelican Bay I, a Condominium, The Breakwater at Pelican Bay II, a Condominium, The Breakwater at Pelican Bay III, a Condominium, The Breakwater at Pelican Bay IV, a Condominium, and The Breakwater at Pelican Bay V, a Condominium, (hereinafter the "Condominiums"), and The Breakwater at Pelican Bay, (hereinafter the "Complex"), including recreational and other common facilities which serve the Complex. Said Condominiums and Complex shall be operated on a not-for-profit basis for the mutual use, benefit, enjoyment and advantage of the members of the Association; to make such improvements, additions and alterations to said Condominiums and Complex as may be necessary or desirable from time to time as authorized by the respective Declarations, and the Bylaws of the Association; to purchase and own real or personal property; and to conduct and transact all business necessary and proper in the management, operation and maintenance of said Condominiums and the Complex; all as agents of the members of the Association.

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

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

4.1 General. The Association shall have all of the common-law and statutory powers of a corporation not for profit under the Laws of Florida that are not in conflict with the provisions of these Articles or Florida Law, including Chapter 718 of the Florida Statutes, hereinafter "the Florida Condominium Act" or "the Act".

4.2 Enumeration. The Association shall have all the powers and duties set forth in the Act and as it may be amended from time to time, except as limited by the Declarations, as they may be amended from time to time, these Articles and as they may be amended from time to time, the Bylaws and as they may be amended from time to time, including but not limited to the following:

4.2.1 To make and collect assessments and other charges against Members as Unit Owners, and to use the proceeds thereof in the exercise of its powers and duties.

4.2.2 To buy, own, operate, lease, sell and trade both real and personal property as may be necessary or convenient in the administration of the Condominiums and Complex.

4.2.3 To maintain, repair, replace, reconstruct, add to, and operate the Condominium Property, the Complex or any other property acquired or leased by the Association for use by Unit Owners or the Association.

4.2.4 To purchase insurance upon the Condominium Property and Complex and insurance for the protection of the Association, its Officers, Directors, and members as Unit Owners.

4.2.5 To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Condominium Property and Complex, the health, comfort, safety and welfare of the Unit Owners, and for the administration of the Association.

4.2.6 To approve or disapprove the leasing, transfer, mortgaging, ownership and possession of Units as may be provided by the Declarations.

4.2.7 To enforce by legal means the provisions of the Act, the Declarations, these Articles, the Bylaws, and the Rules and Regulations for the use of the Condominium Property and Complex.

4.2.8 To contract for the management of the Condominiums and Complex and any facilities used by the Unit Owners, and to delegate to the party with whom such contract has been entered into all of the powers and duties of the Association except those which require specific approval of the Board of Directors or the membership of the Association.

4.2.9 To employ personnel to perform the services required for proper operation of the Condominiums and Complex.

4.3 Condominium and Complex Property. All funds and the titles of all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declarations, these Articles and the Bylaws.

4.4 Distribution of Income. The Association shall make no distribution of income to its members, directors or officers.

4.5 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Declarations and the Bylaws.

5. MEMBERS. The members of the Association shall consist of all of the record owners of Units in the Condominiums, and after termination of the Condominium or Condominiums shall consist of those who were members at the time of the termination and their successors and assigns.

5.1 Assignment. 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 Unit for which that share is held.

5.2 Voting. On all matters upon which the membership shall be entitled to vote, there shall be only one vote for each Unit, which vote shall be exercised or cast in the manner provided by the Declarations or Bylaws. Any person or entity owning more than one Unit shall be entitled to one vote for each Unit owned, subject to the procedure contained in the Condominium Documents.

5.3 Meetings. The Bylaws shall provide for an annual meeting of members, and shall make provision for regular and special meetings of members other than the annual meeting.

6. TERM OF EXISTENCE. The Association shall have perpetual existence.

7. OFFICERS. The affairs of the Association shall be administered by the Officers designated in the Bylaws. The Officers shall be elected by the Board of Directors of the Association at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board of Directors. The Bylaws may provide for the removal from office of Officers, for filling vacancies, and for the duties of the Officers.

8. DIRECTORS.

8.1 Number and Qualification. The property, business and affairs of the Association shall be managed by a Board consisting of the number of Directors determined by the Bylaws, but which shall consist of not less than three (3) Directors.

8.2 Duties and Powers. All of the duties and powers of the Association existing under the Act, the Declarations, these Articles and the Bylaws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by the Unit Owners when such approval is specifically required.

8.3 Election; Removal. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

9. INDEMNIFICATION.

9.1 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.

9.2 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 Section 6.1 above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorney's fees and appellate attorney's fees) actually and reasonably incurred by him in connection therewith.

9.3 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 is not entitled to be indemnified by the Association as authorized by this Article 6.

9.4 Miscellaneous. The indemnification provided by this Article 6 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.

9.5 Insurance. The Association shall have 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 duty to indemnify him against such liability under the provisions of this Article.

9.6 Amendment. Anything to the contrary herein notwithstanding, the provisions of this Article 9 may not be amended without the approval in writing of all persons whose interest would be adversely affected by such amendment.

10. BYLAWS. The Bylaws of this Corporation may be altered, amended or repealed in the manner provided in the Bylaws.

11. AMENDMENTS. Except as elsewhere specifically provided herein to the contrary, amendments to these Articles of Incorporation may be effected as follows:

11.1 Initiation of Amendments; Approval. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors of the Association or by not less than 25% of the Voting Interests of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing. Approval of proposed amendments must be by affirmative vote of two thirds (2/3) of the Voting Interests of the Association present, in person or by proxy, and voting at a duly noticed meeting of the Association at which a quorum is present. Amendments correcting errors or omissions in these Articles may be adopted by the Board.

11.2 Execution and Recording. Approval of a duly-adopted amendment shall be evidenced by a certificate of the Association which shall include recording data identifying the Declarations. An amendment of these Articles of Incorporation are effective when properly recorded in the Public Records of Collier County and filed with the Florida Secretary of State, Division of Corporations.

11.3 Procedure. No provision of these Articles of Incorporation shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of these Articles of Incorporation shall contain the full text of the provision to be amended; new words shall

be inserted in the text underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicators of words added or deleted, but, instead, a notation must be inserted immediately preceding the proposed amendment in substantially the following "SUBSTANTIAL REWORDING OF ARTICLE. SEE ARTICLE NUMBER _____ FOR PRESENT TEXT". Nonmaterial errors or omissions in the amendment process shall not invalidate an otherwise properly promulgated or approved amendment.

12. REGISTERED OFFICE ADDRESS AND NAME OF REGISTERED AGENT. The registered office address and the name of the registered agent of the corporation shall be as determined by the Board of Directors from time to time.

ACTIVE: 2309687_3