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N96000001336

March 1, 1996

Florida Department of State
Division of Corporations
Post Office Box 6327
Tallahassee, FL 32314

RE: The Breakwater At Pelican Bay II, III & IV Condominium Associations

Dear Sir or Madam:

Enclosed please find two (2) originals Articles of Incorporation for filing for the above-referenced condominium associations. Kindly file the Articles and file stamp the second original and return to this office. A check in the amount of \$210 is enclosed.

Should you have any questions, please contact me. Thank you.

Sincerely,

RUDEN, McCLOSKEY, SMITH
SCHUSTER & RUSSELL, P.A.

MAR 11 1996 BSB

Angela Tompkins
Angela Tompkins
Legal Assistant

amt

cc: Stephen D. Coleman, President

FILED
96 MAR -7 PM 4:19
TALLAHASSEE, FLORIDA
STATE

FILED
96 MAR -7 PH 4:19
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

**ARTICLES OF INCORPORATION
OF
THE BREAKWATER AT PELICAN BAY II
CONDOMINIUM ASSOCIATION, INC.**

Pursuant to Section 617.02011, Florida Statutes, these Articles of Incorporation are created by Stephen D. Coleman, as sole incorporator, for the purposes set forth below.

ARTICLE I

NAME AND ADDRESS: The name of the corporation, herein called the "Association", is "The Breakwater At Pelican Bay II Condominium Association, Inc." The principal mailing address of the Association shall be at 8880 North Pointe Drive, Naples, FL 33963.

ARTICLE II

DEFINITIONS: The definitions set forth in Section 4 of the Declaration of Condominium shall apply to the terms used in these Articles.

ARTICLE III

PURPOSE AND POWERS: The purpose for which the Association is organized as to provide an entity pursuant to the Florida Condominium Act for the operation of The Breakwater At Pelican Bay II, a Condominium, located in Collier County, Florida. The Association is organized and shall exist upon a non-stock basis as a Florida corporation not for profit. No portion of any earnings of the Association shall be distributed or inure to the private benefit of any member, Director or officer. For the accomplishment of its purposes, the Association shall have all of the common law and statutory powers and duties of a corporation not for profit, except as limited or modified by these Articles, the Declaration of Condominium or by Chapter 718 Florida Statutes, as it may hereafter be amended, including but not limited to the following:

- (A) To make and collect assessments against members of the Association to defray the costs, expenses and losses of the Condominium, and to use the proceeds of assessments in the exercise of its powers and duties.
- (B) To protect, maintain, repair, replace and operate the condominium property.
- (C) To purchase insurance upon the condominium property and Association property for the protection of the Association and its members.

- (D) To reconstruct improvements after casualty and to make further improvements of the property.
- (E) To make, amend and enforce reasonable rules and regulations governing the use of the common elements, and the operation of the Association.
- (F) To approve or disapprove the transfer of ownership, leasing and occupancy of units, as provided by the Declaration of Condominium.
- (G) To enforce the provisions of the Condominium Act, the Declaration of Condominium, these Articles, the Bylaws and any Rules and Regulations of the Association.
- (H) To contract for the management and maintenance of the condominium property to delegate to management any powers and duties of the Association in connection therewith except those which are specifically required by law or by the condominium documents to be exercised by the Board of Directors or the membership of the Association.
- (I) To employ accountants, attorneys, architects, and other professional personnel to perform the services required for proper operation of the Condominium.
- (J) To enter into agreements, or acquire leaseholds, memberships, and other possessory, owner-ship or use interests in lands or facilities contiguous to the lands of the Condominium, if they are intended to provide enjoyment, recreation, or other use or benefit to the unit owners.
- (K) To borrow money without limit as to amount if necessary to perform its other functions here-under.

All funds and the title to all property acquired by the Association shall be held for the benefit of the members in accordance with the provisions of the Declaration of Condominium, these Articles of Incorporation and the Bylaws.

ARTICLE IV

MEMBERSHIP:

- (A) The members of the Association shall consist of all record owners of a fee simple interest in one or more units in the Condominium, as further provided in the Bylaws.

(B) The share of a member in the funds and assets of the Association cannot be assigned or transferred in any manner except as an appurtenance to his unit.

(C) The owners of each unit, collectively, shall be entitled to the number of votes in Association matters as set forth in the Declaration of Condominium and the Bylaws. The manner of exercising voting rights shall be as set forth in the Bylaws.

ARTICLE V

TERM: The term of the Association shall be perpetual.

ARTICLE VI

BYLAWS: The Bylaws of the Association may be altered, amended, or rescinded in the manner provided therein.

ARTICLE VII

DIRECTORS AND OFFICERS:

(A) The affairs of the Association will be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors.

(B) Directors of the Association shall be elected by 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.

(C) The business of the Association shall be conducted by the officers designated in the Bylaws. The officers shall be elected each year by the Board of Directors at its first meeting after the annual meeting of the members of the Association, and they shall serve at the pleasure of the Board.

ARTICLE VIII

AMENDMENTS: Amendments to these Articles shall be proposed and adopted in the following manner:

(A) Proposal. Amendments to these Articles may be proposed by a majority of the Board or by petition of the owners of one-fourth (1/4) of the units by instrument, in writing, signed by them.

(B) Procedure. Upon any amendment or amendments to these Articles being proposed by said Board or unit owners, such proposed amendment or amendments shall be submitted to a vote of the members no. later than the next annual meeting for which proper notice can be given.

(C) Vote Required. Except as otherwise required by law, a proposed amendment to these Articles of Incorporation shall be adopted if it is approved by a majority of the voting interests at any annual or special meeting, or by approval in writing of a majority of the voting interests without a meeting, provided that notice of any proposed amendment has been given to the members, and the notice contains the full text of the proposed amendment.

(D) Effective Date. An amendment shall become effective upon filing with the Secretary of State and recording a certified copy in the Public Records of Collier County, Florida.

ARTICLE IX

INITIAL DIRECTORS: The initial Directors of the Association shall be:

Stephen D. Coleman
5811 Pelican Bay Boulevard, Suite 208
Naples, FL 33963

Gerald F. Griffin, II
5551 Ridgewood Drive, #203
Naples, FL 33963

Richard F. Corace
5551 Ridgewood Drive, #203
Naples, FL 33963

ARTICLE X

INITIAL REGISTERED AGENT:

The initial registered agent of the Association shall be at:

5811 Pelican Bay Boulevard, Suite 208
Naples, FL 33963

The initial registered agent at said address shall be:

Stephen D. Coleman

ARTICLE XI

INDEMNIFICATION: To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every officer of the Association against all expenses and liabilities, including attorneys fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Association. The foregoing right of indemnification shall not be available if a judgment or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved:

- (A) Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgment in its favor.
- (B) A violation of criminal law, unless the Director or officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.
- (C) A transaction from which the Director or officer derived an improper personal benefit.
- (D) Recklessness, or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and wilful disregard for human rights, safety or property, in an action by or in the right of someone other than the Association or a member.
- (E) Wrongful conduct by Directors or officers appointed by the Developer, in a proceeding brought by or on behalf of the Association.

In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approves such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a Director or officer may be entitled.

WHEREFORE the incorporator has caused these presents to be executed this 12th day of February, 1996.

By: 

STEPHEN D. COLEMAN
Incorporator

**STATE OF FLORIDA
COUNTY OF COLLIER**

The foregoing instrument was acknowledged before me this 12th day of February, 1996, by Stephen D. Coleman, who is personally known to me and did not take an oath.


Notary Public

Sandra D. Burton
Print name

OFFICIAL NOTARY SEAL
SANDRA D BURTON
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC258648
MY COMMISSION EXP. FEB. 10, 1997

Notarial Seal

ACCEPTANCE BY REGISTERED AGENT

Having been named to accept service of process for The Breakwater At Pelican Bay II Condominium Association, Inc., at a place designated in these Articles of Incorporation, I hereby accept the appointment to act in this capacity and agree to comply with the laws of the State of Florida in keeping open said office.


STEPHEN D. COLEMAN

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