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DUANE MORRIS MIAMI

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FLORIDA NON-PROFIT CORPORATION

The Ponce Tower Commercial Condominium Association,

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| Certificate of Status | 1 |
| Certified Copy | 1 |
| Page Count | 07 |
| Estimated Charge | \$87.50 |

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**ARTICLES OF INCORPORATION
FOR
THE PONCE TOWER COMMERCIAL CONDOMINIUM ASSOCIATION,
INC.**

The undersigned, for the purpose of forming a corporation not for profit pursuant to the laws of the State of Florida, does hereby adopt the following Articles of Incorporation: (these "Articles").

1. Name. The name of the corporation shall be The Ponce Tower Commercial Condominium Association, Inc. (the "Association").
2. Principal Office. The principal office of the Association is 1804 Ponce de Leon Boulevard, Coral Gables, Florida 33134.
3. Registered Office - Registered Agent. The street address of the Registered Office of the Association is c/o Duane Morris, LLP; 200 South Biscayne Boulevard; Suite 3400; Miami, Florida 33131. The name of the Registered Agent of the Association is:

PATRICIA KIMBALL FLETCHER, P.A.

4. Definitions. A declaration entitled Declaration of Condominium for The Ponce Tower Commercial Condominium (the "Declaration") will be recorded in the Public Records of Miami-Dade County, Florida, and shall govern all of the operations of a condominium to be known as The Ponce Tower Commercial Condominium (the "Condominium"). All initially capitalized terms not defined herein shall have the meanings set forth in the Declaration.

5. Purpose. The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act (the "Act") for the operation of the Condominium to be developed on property located in Miami-Dade County, Florida. The Association is organized to provide a means of administering the Condominium. The Unit Owners of the Condominium shall automatically be members ("Members") of the Association.

6. Powers and Duties. The powers of the Association shall include and be governed by the following:

6.1 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, the Declaration, the By-Laws or the Act.

6.2 Enumeration. Without limiting the foregoing, the Association shall have all of the powers and duties reasonably necessary to operate the Condominium pursuant to the Declaration and as more particularly described in the By-Laws including, but not limited to, the following:

6.2.1 Assessments and Special Assessments. To make and collect Assessments, Special Assessments and other charges from Unit Owners as provided in the Declaration, and to use the proceeds thereof in the exercise of its powers and duties.

6.2.2 Real and Personal Property. To buy, own, operate, lease, sell, trade and mortgage both real and personal property as may be necessary or convenient in the administration of the Condominium, and to maintain, repair, replace, reconstruct, add to and operate any Condominium Property, and other property acquired or leased by the Association for use by Unit Owners in the Condominium.

6.2.3 Insurance. To purchase insurance upon any Condominium Property and insurance for the protection of the Association, its officers, directors and Unit Owners of the Condominium. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was 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 Article 12.

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6.2.4 Rules and Regulations. To make and amend reasonable rules and regulations (the "Rules and Regulations") for the maintenance, conservation and use of any Condominium Property and for the health, comfort, safety and welfare of the Unit Owners in the Condominium.

6.2.5 Enforcement. To enforce by legal means the provisions of the Act, the Declaration, these Articles, the By-Laws, and the Rules and Regulations.

6.2.6 Management and Employees. To employ personnel, retain independent contractors, managers, and professional personnel; enter into any supply or service contracts; and contract for the management of the Condominium and, in connection therewith, to delegate powers and duties of the Association to the extent and in the manner permitted by the Declaration, the By-Laws, and the Act.

6.2.7 Approval of Transfers. Approve or disapprove the leasing, transfer, ownership, and possession of Units as may be provided by the Declaration.

7. Unit Owners and Membership.

7.1 Membership. The Members of the Association shall consist of all of the record owners of Units in the Condominium from time to time.

7.2 Assignment. The share of a Unit Owner 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. The funds and assets of the Association shall be expended, held or used only for the benefit of the Unit Owners and for the purposes authorized herein, in the Declaration, and in the By-Laws.

7.3 Voting. On all matters upon which the Unit Owners shall be entitled to vote, there shall be one (1) vote for each Loft Unit and five (5) Votes for each Tower Unit, which vote(s) shall be exercised or cast in the manner provided by the By-Laws. Any person or entity owning more than one (1) Loft Unit shall be entitled to one (1) vote for each Loft Unit owned. Any person or entity owning more than one (1) Tower Unit shall be entitled to five (5) votes for each Tower Unit owned. Any person or entity owning Tower Units and Loft Units shall be entitled to one (1) vote for each Loft Unit owned and five (5) votes for each Tower Unit owned.

7.4 Prior to Recordation of Declaration. Until such time as the real property comprising the Condominium, and the improvements now and/or to be constructed thereon, are submitted to the condominium form of ownership by recordation of the Declaration in the Public Records of Miami-Dade County, Florida, the membership of the Association (the "Membership") shall be comprised of the Directors of the Association, each of whom shall be entitled to cast a vote on all matters upon which the Membership would be entitled to vote.

8. Term of Existence. The Association shall have perpetual existence.

9. Directors.

9.1 Number and Qualification. The property, business and affairs of the Association shall be managed by a Board of Directors (the "Board") consisting initially of three (3) directors, but subject to change as provided by the By-Laws. Directors appointed or designated by the Developer need not be Unit Owners of the Association or occupants of Units in the Condominium. All other directors must be Unit Owners.

9.2 Duties and Powers. All of the duties and powers of the Association existing under the Act, the Declaration, these Articles, and the By-Laws shall be exercised exclusively by the Board, its agents, contractors and/or employees, subject only to approval by Unit Owners when such approval is specifically required by the Declaration or the Act.

9.3 Election; Removal. Directors shall be appointed, elected, and removed as provided in the By-Laws.

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9.4 Current Directors. The names and addresses of the members of the current Board of Directors who shall hold office until their successors are appointed and/or elected, are as follows:

| <u>NAME:</u> | <u>ADDRESS:</u> |
|------------------|---|
| Juan C. Menendez | 1804 Ponce de Leon Boulevard Coral Gables, Florida 33134 |
| Sergio Pino | 7270 N.W. 12th Street Suite 410 Miami, Florida 33126 |
| Nancy Aguilera | 1804 Ponce de Leon Boulevard Coral Gables, Florida 33134 |

10. Officers. The affairs of the Association shall be administered by the officers holding the offices designated in the By-Laws. The officers shall be elected by the Board and shall serve at the pleasure of the Board. The names and addresses of the current officers who shall serve until their successors are designated by the Board are as follows:

| | |
|-----------------------------|---|
| <u>PRESIDENT:</u> | Juan C. Menendez 1804 Ponce de Leon Boulevard Coral Gables, Florida 33134 |
| <u>VICE PRESIDENT:</u> | Sergio Pino 7270 N.W. 12th Street Suite 410 Miami, Florida 33126 |
| <u>SECRETARY/TREASURER:</u> | Nancy Aguilera 1804 Ponce de Leon Boulevard Coral Gables, Florida 33134 |

11. Incorporator. The name and address of the Incorporator is as follows:

Patricia Kimball Fletcher, Esq.
Patricia Kimball Fletcher, P.A.
Duane Morris LLP
200 South Biscayne Boulevard, Suite 3400
Miami, Florida 33131

12. Indemnification.

12.1 Indemnity. The Association shall indemnify any person 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, employee, officer, or agent of the Association, against expenses (including reasonable attorneys' fees and paraprofessional fees at trial and upon appeal), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceedings, if he acted in good faith and 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, has no reasonable cause to believe his conduct was unlawful.

12.2 Limitations on Indemnification. Notwithstanding the foregoing, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have adjudged to be liable for gross negligence or intentional misconduct in the performance of his duties to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability, but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

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12.3 Effect of Termination of Action. 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.

12.4 Expenses. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 12.1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and paraprofessional fees at trial and upon appeal) actually and reasonably incurred by him in connection therewith.

12.5 Approval. Any indemnification under Section 12.1 above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in Section 12.1 above. Such determination shall be made (a) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such quorum is not obtainable, or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by a majority of the voting interests of the Unit Owners.

12.6 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 as authorized by the Board in any specific case upon receipt of an undertaking by or on behalf of the affected director, officer, employee or agent to repay such amount until such time it shall ultimately be determined that he was not entitled to be indemnified by the Association as authorized in this Article 12.

12.7 Miscellaneous. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the By-Laws, agreement, vote of Unit Owners or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person.

13. By-Laws. The first By-Laws of the Association shall be adopted by the Board and may be altered, amended or rescinded by the Board, Unit Owners, and/or the Developer as provided in the By-Laws.

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

14.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered.

14.2 Proposal. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board or Unit Owners holding one-third (1/3) of the voting interests in the Association.

14.3 Approval. An amendment shall be approved once it is approved:

14.3.1 by Unit Owners holding a majority of the voting interests in the Association present in person or by proxy at a Members meeting at which a quorum thereof has been attained and by not less than sixty-six and two-thirds percent (66-2/3%) of the entire Board; or

14.3.2 by Unit Owners holding eighty percent (80%) of the voting interests in the Association present in person or by proxy at a Members meeting at which a quorum has been attained; or

14.3.3 prior to the date upon which Unit Owners other than Developer control the Board, by not less than one hundred percent (100%) of the entire Board.

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14.4 Attendance Not Required. Directors not present in person at the meeting considering the amendment may express their agreement or disagreement in writing, provided that the same is delivered to the Secretary at or prior to the meeting. Such agreement or disagreement may not be used as a vote for or against the action taken and may not be used as a vote for the purpose of creating a quorum.

14.5 Limitation. Notwithstanding the foregoing, no amendment shall be made that is in conflict with the Act, the Declaration, or the By-Laws, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers, or options herein provided in favor of or reserved to the Developer herein or in the Declaration unless the Developer shall join in the execution of the amendment.

14.6 Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the Public Records of Miami-Dade County, Florida.

14.7 Developer. The Developer may amend these Articles consistent with the provisions of the Declaration allowing certain amendments to be effected by the Developer alone. This paragraph may not be amended.

For the purpose of forming this association under the Laws of the State of Florida, the undersigned, being the Incorporator of this Association, has executed these Articles of Incorporation to be effective as of the 4th day of October, 2004.

Patricia K. Fletcher
PATRICIA KIMBALL FLETCHER, as
President of Patricia Kimball Fletcher, P.A.

STATE OF FLORIDA)
) SS.:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 4th day of October, 2004 by PATRICIA KIMBALL FLETCHER as President of Patricia Kimball Fletcher, P.A., who is personally known to me or who presented _____ as identification, on behalf of the corporation.

My commission expires:

Marlene Melendez
NOTARY PUBLIC, State of Florida at Large
Print name: Marlene Melendez



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DUANE MORRIS MIAMI

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ACCEPTANCE BY REGISTERED AGENT

The undersigned, having been named to accept service of process for the above-stated corporation at the place designated in this certificate, hereby agrees to act in this capacity, is familiar with, and accepts, the obligations of this position and further agrees to comply with the provisions of all statutes relative to the proper and complete performance of my duties.

Dated this 4th day of October, 2004.

PATRICIA KIMBALL FLETCHER, P.A.

By: Patricia K. Fletcher
Patricia Kimball Fletcher
President

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