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**FLORIDA NON-PROFIT CORPORATION**

**THE LOFTS ON BAYSHORE CONDOMINIUM ASSOCIATION, INC.**

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May 26, 2004

PORTER, WRIGHT

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**ARTICLES OF INCORPORATION  
OF  
THE LOFTS ON BAYSHORE CONDOMINIUM ASSOCIATION, INC.**

The undersigned incorporator, for the purpose of forming a corporation not for profit pursuant to the laws of the State of Florida, hereby adopts the following Articles of Incorporation:

**ARTICLE 1: NAME**

The name of the corporation shall be THE LOFTS ON BAYSHORE CONDOMINIUM ASSOCIATION, INC. For convenience, the corporation shall be referred to in this instrument as the "Association", these Articles of Incorporation as the "Articles", and the Bylaws of the Association as the "Bylaws".

**ARTICLE 2: PURPOSE**

The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act as it exists on the date hereof (the "Act") for the operation of that certain condominium located or to be located in Collier County, Florida, and known as The Lofts on Bayshore Condominium.

**ARTICLE 3: DEFINITIONS**

The terms used in these Articles shall have the same definitions and meaning as those set forth in the Declaration of Condominium for The Lofts on Bayshore (the "Declaration") to be recorded in the Public Records of Collier County, Florida, unless herein provided to the contrary, or unless the context otherwise requires.

**ARTICLE 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, the Declaration of Condominium, the Bylaws or the Act

**4.2 Enumeration.** The Association shall have all of the powers and duties set forth in the Act, and all of the powers and duties reasonably necessary to operate the Condominium pursuant to its Declaration and as more particularly described in the Bylaws, as they may be amended from time to time, including, but not limited to, the following:

(a) 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.

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(b) To buy, own, operate, lease, sell, trade and mortgage both real and personal property.

(c) To maintain, repair, replace, reconstruct, add to and operate the Condominium Property, and other property acquired or leased by the Association.

(d) To purchase insurance upon the Condominium Property and insurance for the protection of the Association, its officers, directors, committee members and Unit Owners.

(e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Condominium Property.

(f) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the Bylaws, and the rules and regulations for the use of the Condominium Property.

(g) To contract for the management and maintenance of the Condominium Property and to authorize a management agent (which may be an affiliate of Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Elements with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Condominium Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

(h) To employ personnel to perform the services required for the proper operation of the Condominium.

(i) To perform all of the powers and duties set forth in the Declaration for any other condominium operated by the Association.

**4.3 Condominium Property.** All funds and the title to 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 Declaration, these Articles and the Bylaws.

**4.4 Distribution of Income; Dissolution.** The Association shall make no distribution of income to its members, directors or officers, and upon dissolution, all assets of the Association shall be transferred only to another non-profit corporation or a public agency or as otherwise authorized by the Florida not for Profit Corporation Act.

**4.5 Limitation.** The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration, the Bylaws and the Act, provided that in the event of conflict, the provisions of the Act shall control over those of the Declaration and Bylaws.

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**ARTICLE 5 MEMBERS**

**5.1 Membership.** The members of the Association shall consist of all of the record title owners of Units in the Condominium and any other condominium operated by the Association, from time to time, and after termination of the Condominium, shall also consist of those who were members at the time of such termination, and their successors and assigns.

**5.2 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.

**5.3 Voting.** On all matters upon which the membership shall be entitled to vote, the voting rights shall be as set forth and exercised or cast in the manner provided by the Declaration and the Bylaws. No votes may be split.

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

**ARTICLE 6: TERM OF EXISTENCE**

The Association shall have perpetual existence.

**ARTICLE 7: INCORPORATOR**

The name and address of the Incorporator of this Corporation

**NAME**

Ellen A. Goldman, Esq.

**ADDRESS**

5801 Pelican Bay Boulevard, Suite 300  
Naples, Florida 34108

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**ARTICLE 8: OFFICERS AND 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 in the manner provided by the Bylaws, but which shall consist of not less than three (3) directors. Directors, other than designees of Developer, must be members of the Association. 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, and they shall serve at the pleasure of the Board.

**8.2 Duties and Powers.** All of the duties and powers of the Association existing under the Act, the Declaration, these Articles and the Bylaws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by 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 and subject to the qualifications set forth in the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

**8.4 Term of Developer's Directors.** The Developer shall appoint the members of the first Board of Directors and their replacements who shall hold office for the periods described in the Bylaws.

**8.5 Initial Directors.** The names and addresses of the members of the initial Board of Directors who shall hold office until their successors are elected and have taken office, as provided in the By-Laws, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Peter B. Canalia	18525 S. Torrence Lansing, IL 60438
Brad Schiffer	620 Sugar Pine Lane Naples, FL 34108
Deborah Angus	2842 Barrett Avenue Naples, FL 34112

**ARTICLE 10: INDEMNIFICATION**

**10.1 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, committee member, employee, officer or agent of the Association, against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred

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by him in connection with such action, suit or proceeding, unless (a) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed indemnitor, that he did not act in good faith or in a manner he reasonably believed to be not in, or 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 (b) such court further specifically determines 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 or did act in a manner which he reasonably believed to be not in or opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

**10.2 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 10.1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

**10.4 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, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article 10.

**10.5 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 any by-law, agreement, vote of members 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.

**10.6 Insurance.** 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 the Association, or is or was serving, at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and included 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 this Article.

**10.7 Amendment.** Anything to the contrary herein notwithstanding, the provisions of this Article 10 may not be amended without the prior written consent of all persons whose interest would be adversely affected by such amendment.

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#### **ARTICLE 11: BYLAWS**

The first Bylaws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded in the manner provided in the Bylaws and the Declaration.

#### **ARTICLE 12: AMENDMENTS**

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

**12.1 Notice.** Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in Chapter 617, Florida Statutes. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.

**12.2 Adoption.** A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third (1/3) of the members 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, providing the approval is delivered to the Secretary at or prior to the meeting. The approvals must be:

(a) by not less than a majority of the votes of all of the members of the Association represented at a meeting at which a quorum thereof has been attained and by not less than 66-2/3% of the entire Board of Directors; or

(b) by not less than 100% of the entire Board of Directors.

**12.3 Limitation.** No amendment shall make any changes in the qualifications for membership, nor in the voting rights or property rights of members, nor any changes in Sections 4.3, 4.4 or 4.5 of Article IV, entitled "Powers", without the approval in writing of all members and the joinder of all record owners of mortgages upon Units. No amendment shall be made that is in conflict with the Act, the Declaration or the Bylaws, 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 Developer, or an affiliate of Developer, unless Developer shall join in the execution of the amendment. No amendment to this paragraph 12.3 shall be effective.

**12.4 Developer Amendments.** To the extent lawful, the Developer may amend these Articles consistent with the provisions of the Declarations allowing certain amendments to be effected by the Developer alone.

**12.5 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 Collier County, Florida.



**ARTICLE 13: INITIAL REGISTERED OFFICE ADDRESS AND NAME OF REGISTERED AGENT PRINCIPAL OFFICE**

The initial registered office of this corporation shall be at agent shall be Ellen A. Goldman, Esq. Until changed, the principal office and mailing address of the Association shall be 5801 Pelican Bay Boulevard, Suite 300, Naples, Florida 34108.

WHEREFORE, the incorporator has caused these presents to be executed this 26 day of May, 2004.

*Ellen A. Goldman*

**CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE FOR THE SERVICE OF PROCESS WITHIN THIS STATE, NAMING AGENT UPON WHOM PROCESS MAY BE SERVED**

In compliance with the laws of Florida, the following is submitted:

First - That desiring to organize under the laws of the State of Florida with its principal office, as indicated in the foregoing Articles of Incorporation, in the County of Collier, State of Florida, the corporation has named Ellen A. Goldman, Esq. , of 5801 Pelican Bay Boulevard, Suite 300, Naples, Florida 34108 as its statutory agent.

Having been named the statutory agent of said corporation at the place designated in this certificate, I hereby accept the same and agree to act in this capacity, and agree to comply with the provisions of Florida law relative to keeping the registered office open.

*Ellen A. Goldman*  
Ellen A. Goldman, Esq.

Printed Name, Registered Agent

Dated this 26 day of May, 2004

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