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FLORIDA NON-PROFIT CORPORATION

The Breakwater Condominium Associates, Inc.

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLES OF INCORPORATION
OF
THE BREAKWATER CONDOMINIUM ASSOCIATION, INC.
a Corporation Not-For-Profit

In order to form a corporation not-for-profit under the laws of the State of Florida, the undersigned hereby forms a corporation for the purposes and with the powers herein specified; and to that end the undersigned does, by these Articles of Incorporation, set forth:

ARTICLE 1
NAME

The name of the corporation shall be **THE BREAKWATER 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 By-Laws of the Association as the "By-Laws".

ARTICLE 2
OFFICE

The principal office and mailing address of the Association shall be at 940 Ocean Drive, Miami, Florida 33139, Attention: Property Administrator, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at its principal office.

ARTICLE 3
PURPOSE

The objects and purposes of the Association are those objects and purposes as are authorized by the Declaration of Condominium of The Breakwater Condominium recorded (or to be recorded) in the Public Records of Miami-Dade County, Florida, as hereafter amended and/or supplemented from time to time (the "Declaration"). The further objects and purposes of the Association are to administer the operation and management of the Condominium which may be established in accordance with the Florida Condominium Act, Chapter 718, Florida Statutes (the "Act") and to preserve the values and amenities in the Condominium Property (as defined in the Declaration) for the benefit of the Members of the Association. The Association is organized not-for-profit and no part of the net earnings, if any, shall inure to the benefit of any Member or individual person, firm or corporation

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ARTICLE 4
DEFINITIONS

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

ARTICLE 5
POWERS

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

- 5.1 **General.** The Association shall have all of the common-law and statutory powers of a corporation not-for-profit under the Laws of Florida, except as expressly limited or restricted by the terms of these Articles, the Declaration or the By-Laws.
- 5.2 **Enumeration.** The Association shall have all of the common law and statutory powers of a corporation not-for-profit which are not in conflict with the terms of these Articles and the Declaration above identified. The Association shall also have all of the powers necessary to implement the purposes of the Association as set forth in the Declaration and to provide for the general health and welfare of its membership, including, without limitation, the following:
- (a) In accordance with the provisions of the Declaration, to make and collect Assessments and other charges against Unit Owners (whether or not such sums are due and payable to the Association), and to use the proceeds thereof in the exercise of its powers and duties.
 - (b) To buy, accept, own, operate, lease, sell, trade and mortgage both real and personal property in accordance with the provisions of the Declaration.
 - (c) To maintain, repair, replace, reconstruct, add to and operate the Condominium Property and other property acquired or leased by the Association in accordance with the Declaration.
 - (d) To purchase insurance upon such portions of the Condominium Property as may be required by the Declaration, and insurance for the protection of the Association, its officers, directors and Unit Owners in accordance with the Declaration.
 - (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Condominium Property and for the health, comfort, safety and welfare of the Unit Owners in accordance with the Declaration.

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(f) To enforce by legal means the provisions of any applicable laws, the Declaration, these Articles, the By-Laws, and the rules and regulations for the use of the Condominium Property.

5.3 Association 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 Unit Owners in accordance with the provisions of the Declaration, these Articles and the By-Laws.

5.4 Distribution of Income; Dissolution. The Association shall not pay a dividend to its Members and 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.

ARTICLE 6 MEMBERS

6.1 Membership. Each Unit Owner shall be a Member of the Association, provided that any such person or entity who holds an ownership interest merely as security for the performance of an obligation shall not be a Member.

6.2 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.

6.3 Voting. Except as set forth in the Declaration, on all matters upon which Members shall be entitled to vote, the Breakwater Hotel Unit Owner shall have two (2) votes and the Breakwater Restaurant Unit Owner shall have one (1) vote. All votes shall be exercised or cast in the manner provided by the Declaration and By-Laws.

6.4 Meetings. The By-Laws 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 7 TERM OF EXISTENCE

The Association shall have perpetual existence.

ARTICLE 8 INCORPORATOR

The name and address of the Incorporator of this Corporation is:

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<u>NAME</u>	<u>ADDRESS</u>
Andrew L. McIntosh, Esq.	101 E. Kennedy Blvd. Suite 2000 Tampa, FL 33602

ARTICLE 9
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 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. Any person may hold two (2) offices, excepting that the same person shall not hold the office of President and Vice President and the same person shall not hold the office of President and Secretary. The By-Laws may provide for the removal from office of officers, for filling vacancies and for the duties and qualifications of the officers.

ARTICLE 10
DIRECTORS

- 10.1 Number and Qualification. The property, business and affairs of the Association shall be managed by a board consisting of three (3) directors as provided by the By-Laws. Directors need not be Members of the Association.
- 10.2 Duties and Powers. All of the duties and powers of the Association existing under the Declaration, these Articles and the By-Laws 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.
- 10.3 Election. The Owner of the Breakwater Restaurant Unit shall be entitled to appoint one (1) member to the Board, the Owner of the Breakwater Hotel Unit shall be entitled to appoint two (2) members to the Board. Vacancies on the Board of Directors shall be filled by the appointment of another Director by the Unit Owner who originally appointed the Director being replaced.
- 10.4 First Directors. The names and addresses of the members of the first 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>
Robert D. Falor	980 N. Michigan Avenue Suite 1400 Chicago, IL 60611

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Geoffrey Hockman	36400 Woodward Ave. Suite 118 Bloomfield Hills, MI 48304
James Rogers	3838 Bay Shore Rd. Sarasota, FL 34234

- 10.5 Standards. A Director shall discharge his duties as a director, including any duties as a member of a Committee: in good faith; with the care an ordinary prudent person in a like position would exercise under similar circumstances; and in a manner reasonably believed to be in the best interests of the Association. Unless a Director has knowledge concerning a matter in question that makes reliance unwarranted, a Director, in discharging his duties, may rely on information, opinions, reports or statements, including financial statements and other data, if prepared or presented by: one or more officers or employees of the Association whom the Director reasonably believes to be reasonable and competent in the manners presented; legal counsel, public accountants or other persons as to matters the Director reasonably believes are within the persons' professional or expert competence; or a Committee of which the Director is not a member if the Director reasonably believes the Committee merits confidence. A Director is not liable for any action taken as a director, or any failure to take action, if he performed the duties of his office in compliance with the foregoing standards.

ARTICLE 11 **INDEMNIFICATION**

- 11.1 Indemnitees. The Association shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the Association) by reason of the fact that he is or was a Director, officer, employee or agent (each, an "Indemnitee") of the Association, against liability incurred in connection with such proceeding, including any appeal thereof, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or 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 interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.
- 11.2 Indemnification. The Association shall indemnify any person, who was or is a party to any proceeding by or in the right of the Association to procure a

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judgment in its favor by reason of the fact that he is or was a Director, officer, employee, or agent of the Association against expenses and amounts paid in settlement not exceeding, in the judgment of the Board of Directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

- 11.3 Indemnification for 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 proceeding referred to in subsection 11.1 or 11.2, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses actually and reasonably incurred by him in connection therewith.
- 11.4 Determination of Applicability. Any indemnification under subsection 11.1 or subsection 11.2, unless pursuant to a determination 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 subsection 11.1 or subsection 11.2. Such determination shall be made by a duly authorized vote of the Board of Directors.
- 11.5 Determination Regarding Expenses. Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible.
- 11.6 Advancing Expenses. Expenses incurred by an officer or Director in defending a civil or criminal proceeding may be paid by the Association in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such Director or officer to repay such amount if he is ultimately found not to be entitled to indemnification by the Association pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the Board of Directors deem appropriate.
- 11.7 Exclusivity; Exclusions. The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and the Association may make any other or further indemnification or advancement of expenses of any of its Directors, officers, employees, or agents, under any By-Law, agreement, vote of

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disinterested Directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any Director, officer, employee, or agent if a judgment or other final adjudication establishes that his actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

- (a) A violation of the criminal law, unless the Director, officer, employee, or agent had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful;
- (b) A transaction from which the Director, officer, employee, or agent derived an improper personal benefit; or
- (c) Willful misconduct or a conscious disregard for the best interests of the Association.

11.8 Continuing Effect. Indemnification and advancement of expenses as provided in this section shall continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to be a Director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless otherwise provided when authorized or ratified.

11.9 Application to Court. Notwithstanding the failure of the Association to provide indemnification, and despite any contrary determination of the Board or of the Members in the specific case, a Director, officer, employee, or agent of the Association who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that:

- (a) The Director, officer, employee, or agent is entitled to mandatory indemnification under subsection 11.3, in which case the court shall also order the Association to pay the Director reasonable expenses incurred in obtaining court-ordered indemnification or advancement of expenses;
- (b) The Director, officer, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the Association of its power pursuant to subsection 11.7; or
- (c) The Director, officer, employee, or agent is fairly and reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether such person met the

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standard of conduct set forth in subsection 11.1, subsection 11.2, or subsection 11.7, unless (a) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or acted in a manner he should have 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 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 should have 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.

- 11.10 Definitions. For purposes of this Article 11, the term "expenses" shall be deemed to include attorneys' fees, including those for any appeals; the term "liability" shall be deemed to include obligations to pay a judgment, settlement, penalty, fine, and expenses actually and reasonably incurred with respect to a proceeding; the term "proceeding" shall be deemed to include any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal; and the term "agent" shall be deemed to include a volunteer; the term "serving at the request of the Association" shall be deemed to include any service as a Director, officer, employee or agent of the Association that imposes duties on such persons.
- 11.11 Amendment. Anything to the contrary herein notwithstanding, no amendment to the provisions of this Article 11 shall be applicable as to any Member eligible for indemnification hereunder who has not given his prior written consent to such amendment.

ARTICLE 12

BY-LAWS

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

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ARTICLE 13
AMENDMENTS


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

- 13.1 **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.
- 13.2 **Adoption.** Amendments shall be proposed and adopted in the manner provided in Chapter 617, Florida Statutes.
- 13.3 **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 5.3 or 5.4 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 Declaration or the By-Laws. No amendment to this paragraph 13.3 or in violation of this paragraph 13.3 shall be effective.
- 13.4 **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 Hillsborough County, Florida with an identification on the first page thereof of the book and page of said public records where the Declaration was recorded which contains, as an exhibit, the initial recording of these Articles.

ARTICLE 14
INITIAL REGISTERED OFFICE;
ADDRESS AND NAME OF REGISTERED AGENT

The initial registered office of this corporation shall be at 101 East Kennedy Boulevard, Suite 2000, Tampa, Florida 33602, with the privilege of having its office and branch offices at other places within or without the State of Florida. The initial registered agent at that address shall be Andrew L McIntosh, Esquire.

IN WITNESS WHEREOF, the Incorporator has affixed his signature this 20th day of September, 2004.



By: Andrew L. McIntosh, Esq.,
Incorporator

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ACCEPTANCE BY REGISTERED AGENT

I accept the appointment as Registered Agent of the Corporation to accept service of process on its behalf, at the place designated in these Articles of Incorporation. I am familiar with, and accept, the obligations of my position as registered agent as provided for in Section 617, Florida Statutes.



Andrew L. McIntosh, Esq., Registered Agent

DATED this 22nd day of September, 2004.

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