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**FLORIDA NON-PROFIT CORPORATION**

1865 Napoli Luxury Condominium Association, Inc.

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## ARTICLES OF INCORPORATION FOR

1865 NAPOLI LUXURY 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 1865 NAPOLI LUXURY 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". The principal office and mailing address of the Association shall be 2601 South Bayshore Drive, Suite 200, Miami, Florida 33133, 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 or at such other place as may be permitted by the Act.

## 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 in Collier County, Florida, and known as 1865 NAPOLI LUXURY CONDOMINIUM (the "Condominium").

## ARTICLE 3

DEFINITIONS

The terms used in these Articles shall have the same definitions and meanings as those set forth in the Declaration of the Condominium 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, the By-Laws 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 the Declaration and as more particularly described in the By-Laws, as they may be amended from time to time, including, but not limited to, the following:

(a) To make and collect Assessments (including Special Assessments) and other charges against members as Unit Owners, and to use the proceeds thereof in the exercise of its powers and duties.

(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 and Unit Owners.

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(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.

(f) To approve or disapprove the leasing, transfer, ownership and possession of units as may be provided by the Declaration.

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

(h) To contract for the management and maintenance of the Condominium Property and to authorize a management agent (which may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments (including Special 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.

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

(j) To execute all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner, by acceptance of the deed to such Owner's Unit, appoints and designates the Board of Directors of the Association as such owner's agent and attorney-in-fact to execute, any and all such documents or consents.

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 By-Laws.

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 Statute.

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 By-Laws and the Act, provided that in the event of conflict, the provisions of the Act shall control over those of the Declaration and By-Laws.

## **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 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, there shall be only one vote for each Unit, which vote shall be exercised or cast in the manner provided by

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the Declaration and By-Laws. Any person or entity owning more than one Unit shall be entitled to one vote for each Unit owned.

5.4 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 6**  
**TERM OF EXISTENCE**

The Association shall have perpetual existence.

**ARTICLE 7**  
**INCORPORATOR**

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

NAME	David Shear
ADDRESS	c/o Fieldstone Lester Shear & Denberg, LLP 201 Alhambra Circle Suite 601 Coral Gables, Florida 33134

**ARTICLE 8**  
**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. The By-Laws may provide for the removal from office of officers, for filling vacancies and for the duties and qualifications of the officers. The names and addresses of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

<u>President:</u>	Alfred Martinez 2601 South Bayshore Drive, Suite 200 Miami, Florida 33133
<u>Vice President/Secretary:</u>	Jennifer Estrada 2601 South Bayshore Drive, Suite 200 Miami, Florida 33133
<u>Treasurer:</u>	Michelle Cachinero 2601 South Bayshore Drive, Suite 200 Miami, Florida 33133

**ARTICLE 9**  
**DIRECTORS**

9.1 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 By-Laws, but which shall consist of not less than three (3) directors. Directors, other than designed of the Developer, must be members of the Association.

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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 of Directors, its agents, contractors or employees, subject only to approval by Unit owners when such approval is specifically required.

9.3 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 By-Laws.

9.4 Term of Developer's Directors. The Developer of the Condominium shall appoint the members of the first Board of Directors and their replacements who shall hold office for the periods described in the By-Laws.

9.5 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:

Alfred Martinez  
2601 South Bayshore Drive,  
Suite 200  
Miami, Florida 33133

Jennifer Estrada  
2601 South Bayshore Drive,  
Suite 200  
Miami, Florida 33133

Michelle Cachinero  
2601 South Bayshore Drive,  
Suite 200  
Miami, Florida 33133

9.6 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 10 INDEMNIFICATION

10.1 Indemnity. The Association shall indemnify any person who was or is a party to any proceeding by reason of the fact that he is or was a director, employee, officer, agent or committee member (each, an "Indemnitee") of the Association, against liability incurred by him in connection with such proceeding, 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 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,

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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 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 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.

10.3 Expenses. To the extent that an indemnitee has been successful on the merits or otherwise in defense of any proceeding referred to in Section 10.1 or 10.2, above, 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.

10.4 Advancing Expenses. Expenses incurred by an officer or director in Defending a civil or criminal proceeding shall be paid by the Association in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of the affected director or officer to repay such amount if he is ultimately found not to be entitled to indemnification by the Association as authorized in this Article 10. Expenses incurred by other Indemnitees may be paid in advance upon such terms and conditions as the Board deems appropriate.

10.5 Determination of Applicability. Any indemnification under subsection 10.1 or subsection 10.2, 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 10.1 or subsection 10.2. Such determination shall be made:

(a) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to such Proceeding;

(b) If such a quorum is not obtainable or, even if obtainable by majority vote of a Committee duly designated by the Board of Directors (in which directors who are parties may participate) consisting solely of two or more Directors not at the time parties to the proceeding;

(c) By independent legal counsel:

(i) selected by the Board of Directors prescribed in Paragraph (a) or the committee prescribed in subparagraph (b); or

(ii) if a quorum of the Directors cannot be obtained for paragraph (a) and the Committee cannot be designated under paragraph (b), selected by majority vote of the full Board of Directors (in which Directors who are parties may participate); or

(d) By a majority of the voting interests of the members of the Association who were not parties to such proceeding.

10.6 Determination Regarding Expenses. Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that

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indemnification is permissible. However, if the determination of permissibility is made by independent legal counsel, persons specified by paragraph 10.1(c) shall evaluate the reasonableness of expenses and may authorize indemnification.

10.7 Exclusivity; Exclusions. The indemnification and advancement of expenses 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. However, indemnification shall not be made to or on behalf of, and all advanced expenses shall be repaid by, any Indemnitee 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 Indemnitee 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 interest; of the Association in a proceeding by or in the right of the Association to procure a judgment in its favor. The indemnification and advancement of expenses provided by this Article shall continue, unless otherwise provided when authorized or ratified, as to a person who has ceased to be a director, officer, employee, agent or committee member and shall inure to the benefit of the heirs and personal representatives of such person, unless otherwise provided when authorized or ratified.

10.8 Insurance. The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was an Indemnitee of the Association, or is or was serving, at the request of the Association, as a director, officer, employee, agent or committee member 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 this Article.

10.9 Alternative Relief. Despite any contrary determination of the Board of Directors to provide indemnification in any particular case, an Indemnitee 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.

10.10 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.

10.11 Definitions. For purposes of this Article 10, 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; and 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.

10.12 Amendment. Anything to the contrary herein notwithstanding, no amendment to the provisions of this Article 10 shall be applicable as to any Indemnitee who has not given his prior written consent to such amendment.

#### ARTICLE 11 BY-LAWS

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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.

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

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

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.** Amendments shall be proposed and adopted in the manner provided in Chapter 617, Florida Statutes and in the Act (the latter to control over the former to the extent provided for in the Act).

12.3 **Limitation.** 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, or an affiliate of the Developer, unless the 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 Declaration 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 Miami-Dade County, Florida.

12.6 **Conflicts.** In the event of any conflict between the provisions of these Articles and the Declaration and/or the By-Laws, the Declaration shall have priority over these Articles and these Articles shall have priority over the By-Laws.

## **ARTICLE 13** **INITIAL REGISTERED OFFICE;** **ADDRESS AND NAME OF REGISTERED AGENT**

The initial registered office of this corporation shall be at Fieldstone Lester Shear & Denberg, LLP, 201 Alhambra Circle, Suite 601, Coral Gables, Florida 33134 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 David Shear.

IN WITNESS WHEREOF the Incorporator has affixed his signature the day and year set forth below.

  
DAVID SHEAR

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CERTIFICATE OF DESIGNATION  
REGISTERED AGENT/REGISTERED OFFICE

Pursuant to the provisions of section 607.0501, Florida Statutes, the undersigned corporation, organized under the laws of the State of Florida, submits the following statement in designating the registered office/registered agent, in the state of Florida.


1. The name of the corporation is:  
  
1865 NAPOLI LUXURY CONDOMINIUM ASSOCIATION, INC.
2. The name and address of the registered agent and office is:  
  
David Shear  
201 Alhambra Circle  
Suite 601  
Coral Gables, Florida 33134

  
\_\_\_\_\_  
David Shear

Title: Incorporator

Date: OCTOBER 8, 2004.

HAVING BEEN NAMED AS REGISTERED AGENT AND TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I HEREBY ACCEPT THE APPOINTMENT AS REGISTERED AGENT AND AGREE TO ACT IN THIS CAPACITY. I FURTHER AGREE TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATING TO THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES, AND I AM FAMILIAR WITH AND ACCEPT THE OBLIGATIONS OF MY POSITION AS REGISTERED AGENT.

  
\_\_\_\_\_  
David Shear  
Date: OCTOBER 8, 2004.

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