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FLORIDA NON-PROFIT CORPORATION

Mandalay Harbor Homeowner's Association, Inc.

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA**ARTICLES OF INCORPORATION**

OF

MANDALAY HARBOR HOMEOWNER'S ASSOCIATION, INC.

Pursuant to Chapter 617, Florida Statutes, the Articles of Incorporation of **Mandalay Harbor Homeowner's Association, Inc.**, a Florida not for profit corporation, are hereby certified as follows:

We, the undersigned, hereby associate ourselves together for the purpose of becoming a corporation not for profit under the laws of the State of Florida, by and under the provisions of the statutes of the State of Florida, providing for the formation, liability, rights, privileges and immunities of a corporation not for profit.

ARTICLE I.
NAME OF CORPORATION

The name of this corporation shall be Mandalay Harbor Homeowner's Association, Inc. (the "Association").

ARTICLE II.
PRINCIPAL & MAILING ADDRESS

The principal office and mailing address of the Association shall be located at 12800 University Drive, Suite 400, Ft. Meyers, FL 33907.

ARTICLE III.
PURPOSE

The purpose of the business to be conducted by the Association shall be the operation and management of the affairs and property of the Association, and to perform all acts provided in the Declaration of Covenants, Conditions and Restrictions for Mandalay Harbor ("Declaration") and applicable Florida Statutes. All capitalized terms not otherwise defined herein shall be given the meanings ascribed to such terms in the Declaration.

ARTICLE IV.
POWERS

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

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Section 1. Common Law and Statutory Powers. 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.

Section 2. Necessary Powers. The Association shall have all of the powers reasonably necessary to exercise its rights and powers and implement its purpose, including, without limitation, the following:

A. The power to fix, levy and collect Assessments against Units, as provided for in the Declaration.

B. The power to expend monies collected for the purpose of paying the expenses of the Association.

C. The power to manage, control, operate, maintain, repair and improve the Common Area and to maintain the roofs, lawns, driveways and exteriors of the Units.

D. The power to purchase supplies, material and lease equipment required for the maintenance, repair, replacement, operation and management of the Common Area and the maintenance of the roofs, lawns, driveways and exteriors of the Units.

E. The power to insure and keep insured the Common Area and the improvements constructed thereon, as provided in the Declaration.

F. The power to employ the personnel required for the operation and management of the Association, the Common Area and the maintenance of the roofs, lawns, driveways and exteriors of the Units.

G. The power to pay utility bills for utilities serving the Common Area.

H. The power to pay all taxes and assessments which are liens against the Common Area.

I. The power to establish and maintain a reserve fund for capital improvements, repairs and replacements.

J. The power to improve the Common Area and the roofs, lawns, driveways and exteriors of the Units, subject to the limitations of the Declaration.

K. The power to control and regulate the use of the Common Area by the Owners, and to promote and assist adequate and proper maintenance of the Property.

L. The power to make reasonable rules and regulations and to amend the same from time to time.

M. The power to enforce by any legal means the provisions of these Articles of Incorporation, the Bylaws, the Declaration and the Rules and Regulations promulgated by the Association from time to time.

N. The power to borrow money, mortgage the Common Area, and to select depositories for the Association's funds, and to determine the manner of receiving, depositing, and disbursing those funds and the form of checks and the person or persons by whom the same shall be signed.

O. The power to enter into a long term contract with any person, firm, corporation or management agent of any nature or kind to provide for the maintenance, operation, repair and upkeep of the Common Area and the maintenance of the roofs, lawns, driveways and exteriors of the Units. The contract may provide that the total operation of the managing agent, firm or corporation shall be at the cost of Association. The contract may further provide that the managing agent shall be paid from time to time a reasonable fee.

P. The power to contract for the management of the Association and to delegate to the manager, all of the powers and duties of the Association, except those matters which must be approved by Owners.

Q. The power to establish additional officers and/or directors of the Association and to appoint all officers provided in the Bylaws, except as otherwise provided in the Bylaws.

R. The power to appoint committees as the Board of Directors may deem appropriate.

S. The power to collect delinquent Assessments by suit or otherwise to abate nuisances and to fine, enjoin or seek damages from Owners for violation of the provisions of the Declaration, these Articles of Incorporation, the Bylaws or the Rules and Regulations.

T. The power to bring suit and to litigate on behalf of the Association and the Owners.

U. The power to adopt, alter and amend or repeal the Bylaws of the Association as may be desirable or necessary for the proper management of the Association.

V. The power to possess, employ and exercise all powers necessary to implement, enforce and carry into effect the powers above described.

W. The foregoing enumeration of powers shall not limit or restrict the exercise of others and further powers which may now or hereafter be permitted by law.

Section 3. Funds and Title to Properties. All funds and title to all properties acquired by the Association and the proceeds thereof shall be held for the benefit of the Owners in accordance with the provisions of the Declaration. No part of the income, if any, of the Association shall be distributed to the Owners, directors, or officers of the Association.

Section 4. Limitations. The powers of the Association shall be subject to and be exercised in accordance with the provisions of the Declaration.

ARTICLE V.

ELECTION OF DIRECTORS

The directors shall be elected in the manner provided in the Bylaws.

ARTICLE VI MEMBERSHIP

All persons owning a vested present interest in the fee title to any of the Units within Mandalay Harbor, as evidenced by a duly recorded proper instrument in the Public Records of Honolulu County, Florida, shall be Members. Membership qualification and other matters relating to membership are set forth in the Declaration and incorporated herein by reference.

ARTICLE VII. VOTING RIGHTS

Each Unit shall be entitled to one vote at Association meetings. In the event of a joint ownership of a Unit, the vote to which that Unit is entitled shall be apportioned among the owners as their interest may appear, or may be exercised by one of such joint owners by the remainder of the joint owners filing a voting certificate with the secretary of the Association.

ARTICLE VIII. EXISTENCE

The Association shall exist perpetually unless dissolved according to law.

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ARTICLE IX.
REGISTERED OFFICE AND REGISTERED AGENT

The registered office of the Association shall be at 777 S. Flagler Drive, Suite 500E, West Palm Beach, FL 33401, and the registered agent shall be Valdes-Fauli Corporate Services. Pursuant to Florida Statute 617.0501(3), a written acceptance is attached.

ARTICLE X.
NUMBER OF DIRECTORS

The business of the Association shall be conducted by a Board of Directors which shall consist of not less than three (3) nor more than nine (9) persons, as determined by the members in accordance with the Bylaws.

ARTICLE XI.
FIRST BOARD OF DIRECTORS

The names and post office addresses of the members of the first Board of Directors, all of whom shall hold office until such time as the Developer relinquishes control of the Association, as described in the Declaration, and their successors are duly elected and qualified, or until replaced by the Developer, are as follows:

| | <u>Name</u> | <u>Office</u> | <u>Address</u> |
|----|---------------|---------------|---|
| 1. | Doug Cordello | Director | 12800 University Dr. #400 Ft. Meyers, FL 33907 |
| 2. | Alex Pockrus | Director | 12800 University Dr. #400 Ft. Meyers, FL 33907 |
| 3. | Thomas Grimm | Director | 12800 University Dr. #400 Ft. Meyers, FL 33907 |

ARTICLE XII.
INDEMNIFICATION OF OFFICERS AND DIRECTORS

A. 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 proceedings, 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 attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceedings, unless (i) 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, nor 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, that he had reasonable cause to believe his conduct was unlawful, and (ii) such court further specifically determines that indemnification should be denied. The termination of any action, suit or proceedings 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.

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

C. 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 XII.

D. Miscellaneous. The indemnification provided by this Article XII shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any bylaw, 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.

E. 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 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.

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

ARTICLE XIII.
RIGHTS OF DEVELOPER

Earthquake Companies, LLC which is the Developer of the development known as Mandalay Harbor, shall have full right and authority to manage the affairs and exclusive right to elect the directors of the Association (who need not be Owners) until the earliest of the following shall occur: (i) one hundred twenty (120) days after the Developer has conveyed to Members all of the Lots or Units contemplated by the General Plan of Development; (ii) the date required by Section 720.307, Florida Statutes as amended, or (iii) on the date when Developer voluntarily elects to relinquish its control of the Association.

ARTICLE XIV.
BYLAWS

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

ARTICLE XV.
INCORPORATOR

The name and address of the incorporator of the Association is:

Name

Address

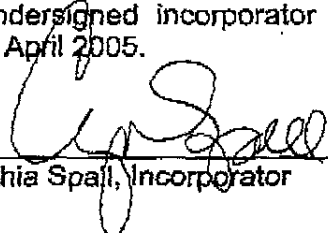
Cynthia Spall

777 S. Flagler Dr., Suite 500E
West Palm Beach, FL 33401

ARTICLE XVI.
CONSTRUCTION

These Articles of Incorporation and the Bylaws of the Association shall be construed, in case of any ambiguity or lack of clarity, to be consistent with the provisions of the Declaration. In the event of any conflict between the terms of the Declaration, these Articles of Incorporation or the Bylaws, the following order of priority shall apply: the Declaration, the Articles of Incorporation and the Bylaws.

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation this 12th day of April 2005.



Cynthia Spall, Incorporator

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ACCEPTANCE OF APPOINTMENT AS REGISTERED AGENT

Having been named as registered agent and to accept service of process for the above stated corporation at the place designated in this certificate, Valdes-Fauli Corporate Services, Inc. hereby accepts the appointment as registered agent and agrees to act in this capacity. Valdes-Fauli Corporate Services, Inc. further agrees to comply with the provisions of all statutes relating to the proper and complete performance of its duties, and Valdes-Fauli Corporate Services, Inc. is familiar with and accepts the obligations of its position as registered agent.

VALDES-FAULI CORPORATE SERVICES, INC.

By: *David G. Bates*
David G. Bates, Vice President

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