

Division of Corporations

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**FLORIDA NON-PROFIT CORPORATION**

Alta Mar Condominium Association, Inc.

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SECRETARY OF STATE  
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This instrument prepared by  
After recording return to:  
Keith R. Waters  
Graham, Buller, Jones, Pratt & Marks, LLP  
Post Office Drawer 1690  
Winter Park, Florida 32790  
407-647-4455

**ARTICLES OF INCORPORATION**

OF

**ALTA MAR 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 I  
NAME OF CORPORATION**

The name of his corporation shall be ALTA MAR CONDOMINIUM ASSOCIATION, INC. (the "Association").

**ARTICLE II  
GENERAL NATURE OF BUSINESS**

The general nature of the business to be conducted by the Association shall be the operation and management of the affairs and property of the Condominium known as Alta Mar, a Condominium (the "Condominium"), located in Lee County, Florida, and to perform all acts provided in the Declaration of Condominium of said Condominium (the "Declaration") and the Condominium Act (all capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such term in the Declaration).

**ARTICLE III  
POWERS**

The Association shall have all of the statutory powers of a corporation not for profit and all of the powers and duties set forth in the Condominium Act, the Declaration, these Articles and the Bylaws. By example and not in limitation of the broad powers set forth in the preceding sentence, the Association shall have the following powers:

- A. The irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for pest control purposes and for the maintenance, repair or replacement of any Common Elements or any portion of a Unit, if any, to be maintained by the Association, or at any time and by force, if necessary, to prevent damage to the Common Elements, the Association Property or to a Unit or Units.
- B. The power to make and collect Assessments and other charges against Unit Owners and to use the proceeds thereof in the exercise of its powers and duties.
- C. The power to lease, maintain, repair and replace the Common Elements and Association Property and other property acquired or leased by the Association.
- D. The power to borrow money, execute promissory notes and other evidences of indebtedness and to give as security therefor mortgages and security interests in Association Property, if any, provided that such actions are approved in the manner provided below for acquiring, conveying, leasing and encumbering real and personal property.
- E. The power to adopt and amend rules and regulations concerning the details of the operation and use of the Common Elements and Association Property, and for the health, comfort, safety and welfare of the Unit Owners.

F. The power to purchase, mortgage or otherwise encumber, convey, lease, receive by gift, or otherwise acquire possessory or use interests in real and personal property, whether or not contiguous to the lands of the Condominium, intended to provide for the enjoyment, recreation or other use or benefit of the Members of the Association. Personal property shall be acquired or encumbered upon a majority vote of the Board of Directors, unless the cost thereof exceeds Seventy Five Thousand Dollars (\$75,000.00) in a single transaction, or One Hundred Fifty Thousand Dollars (\$150,000.00) in the aggregate in any 12-month period, subject to annual CPI increases as more particularly provided in the Declaration, then in either event the acquisition or encumbrance shall require an affirmative vote of not less than 2/3rds of the Voting Interests. Real property shall be acquired, conveyed, leased or encumbered upon a majority vote of the Board of Directors and an affirmative vote of not less than 2/3rds of the Voting Interests; provided, however, that the acquisition of any Unit as a result of a foreclosure of the lien for Assessments (or by deed in lieu of foreclosure) shall be made upon the majority vote of the Board, regardless of the price for the same; and further provided that the Association shall accept any conveyance of any Developer-owned Unit from the Developer in accordance with the Declaration. The Association, through its Board, has the power to hold, lease, mortgage or convey Units acquired through foreclosure (or by deed in lieu of foreclosure) or from the Developer without the consent of Owners. The expenses of purchasing, mortgaging or otherwise encumbering, conveying, leasing, receiving by gift, or otherwise acquiring possessory or use interests in real or personal property, and the expenses of the ownership (including, without limitation, the expense of making and carrying any mortgage related to such ownership), rental, membership fees, taxes, Assessments, operation, maintenance, repairs, replacements and other expenses and undertakings in connection therewith shall be Common Expenses.

G. The power to execute all documents or consents, on behalf of all Owners (and their mortgagees), required by all governmental 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 his Unit, and each mortgagee of a Unit, by acceptance of a lien on said Unit, appoints and designates the President of the Association, as such Owner's agent and attorney-in-fact to execute any and all such documents or consents.

H. The power and obligation to collect from the Unit Owners the cost of maintenance, repair, insurance and replacement of those portions of the Condominium Property which may be made subject to the easements described in Section 2.8 hereof, but only if such easements are granted.

I. The power and obligation to collect from the Unit Owners the Common Expenses relating to that portion of the Condominium Property subject to the Marina Easements Agreement.

J. The power and obligation to collect all Charges.

K. The power to purchase insurance upon the Condominium Property and insurance for the protection of the Association, its officers, directors and Unit Owners.

L. The power to approve or disapprove the leasing, transfer, ownership and possession of Units.

M. The power 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, subject, however, to the limitation regarding enforcement of certain provisions against the Developer, Units owned by the Developer, Commercial Units and Roof Units as set forth in the Declaration.

N. The power to contract for the management and maintenance of the Condominium Property and to authorize a management agent (who 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, 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;

O. The power to contract for the management, operation and upkeep of any and all property held or controlled by the Association.

P. The power to encumber, lease or grant other possessory or use interests or easements in any and all property which the Association may acquire or control, including but not limited to the Common Elements and any recreational facilities.

Q. The power to enter into contracts or agreements for the maintenance of accounting and bookkeeping records and for the use of data processing facilities or services, so as to carry out the Association's responsibilities and to comply with the requirements of the law of the State of Florida with regard to maintenance of records.

R. The power to enter into such other contracts or agreements reasonably necessary or convenient for the proper exercise of the rights, powers, duties and functions of the Association.

S. The power to employ all personnel and engage such professional services as are reasonably necessary to perform the services required for proper exercise of the rights, powers, duties and functions of the Association.

T. The power to contract for and acquire one or more Units within the Condominium for such purposes that are not in conflict with the Declaration, these Articles of Incorporation or the Bylaws, including for the purposes of providing a Unit(s) for the manager(s) of the Condominium which the Association operates, which shall include the power to assume or grant a mortgage encumbering the Unit(s) acquired by the Association.

U. The power to exercise any and all common law and statutory powers, although not specifically recited above, of a corporation not-for-profit, and of an association within the meaning of the Condominium Act, reasonably necessary or convenient to carry out and perform the purpose for which the Association is organized and its enumerated powers.

V. All of the powers which a corporation not for profit in the State of Florida may exercise pursuant to the Declaration, these Articles of Incorporation, the Bylaws, Chapters 607 and 617, Florida Statutes and the Condominium Act, in all cases except as expressly limited or restricted in the Condominium Act.

In the event of conflict among the powers and duties of the Association or the terms and provisions of the Declaration, exhibits attached thereto or otherwise, the Declaration shall take precedence over the Articles of Incorporation, Bylaws and applicable rules and regulations; the Articles of Incorporation shall take precedence over the Bylaws and applicable rules and regulations; and the Bylaws shall take precedence over applicable rules and regulations, all as amended from time to time. Except for those rights, privileges and powers reserved to the Developer as provided in the Declaration, the Association shall at all times be the entity having ultimate control over the Condominium, consistent with the Condominium Act.

#### ARTICLE IV. MEMBERS

All persons owning a vested present interest in the fee title to any of the Units of the Condominium as evidenced by a duly recorded proper instrument in the Public Records of Lee County, Florida, shall be "Members" of the Association. Membership shall terminate automatically and immediately as a Member's vested interest in the fee title in a Unit terminates, except that upon termination of the entire Condominium, the membership shall consist of those who were Members at the time of the vote to terminate the Condominium as provided in said Declaration. In the event a Unit is owned by a legal entity other than a natural person, the officer, director, or other official so designated by such legal entity shall exercise such Owner's membership rights. The share of a Member in the funds of the and assets of the Association cannot be assigned, hypothecated, pledged, encumbered or transferred in any manner except as an appurtenance to the Unit for which that share is held.

After the Association approves of a conveyance of a Unit as provided in the Declaration or after the Association is notified of a conveyance of a Commercial or Roof Unit as provided in the Declaration, the change of membership in the Association shall be evidenced in the Association records by delivery to the secretary of the Association of a certified copy of a deed or other instrument of conveyance.

**ARTICLE V**  
**VOTING INTEREST**

Each Residential Unit, each Roof Unit, and each Commercial Unit shall be entitled to one vote per each Unit in all Association matters subject to a vote of the Unit Owners ("Voting Interest"). In the event of a joint ownership of a Unit, the Voting Interest to which that Unit is entitled shall 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, as more particularly provided in the Bylaws.

**ARTICLE VI**  
**INCOME DISTRIBUTION**

No part of the income of the Association shall be distributed to its Members, except as compensation for services rendered.

**ARTICLE VII**  
**EXISTENCE**

The Association shall exist perpetually unless dissolved according to law.

**ARTICLE VIII**  
**REGISTERED OFFICE AND REGISTERED AGENT**

The initial registered office of the Association shall be at 1200 S. Pine Island Road, Plantation, Florida 33324. The initial registered agent of the Association shall be CT Corporation.

**ARTICLE IX**  
**NUMBER OF DIRECTORS**

The business of the Association shall be conducted by a Board of Directors which shall consist of three (3) persons before the Turnover Date and of five (5) persons after the Turnover Date.

**ARTICLE X**  
**ELECTION OF DIRECTORS AND OFFICERS**

The names and post office addresses of the members of the first Board of Directors and officers, all of whom shall hold office until their successors are duly elected and qualified, are as follows:

<b><u>NAME</u></b>	<b><u>OFFICE</u></b>	<b><u>ADDRESS</u></b>
Robert C. Rhodie _____	President/Treasurer	1774 Broadway, 23 <sup>rd</sup> Fl., NY, NY 10019
Charles D. Rubenstein _____	Vice President/Assistant Secretary	1775 Broadway, 23 <sup>rd</sup> Fl., NY, NY 10019
Kathryn Mansfield _____	Secretary/Vice President	3100 Monticello, Ste 200, Dallas, TX 75205

The successors of the foregoing Directors shall be elected by the Members in the manner and according to the procedures set forth in the Bylaws of the Association.

**ARTICLE XI**  
**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 **ARTICLE XI** 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.

**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 proceedings 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 XI**.

**D. Miscellaneous.** The indemnification provided by this **ARTICLE XI** 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 XI** may not be amended without the prior written consent of all persons whose interest would be adversely affected by such amendment.

#### **ARTICLE XII RIGHTS OF DEVELOPER**

Notwithstanding anything contained in these Articles of Incorporation, the Bylaws or the Declaration, ALTA MAR DEVELOPMENT, LLC, a Florida limited liability company, which is the Developer of the Condominium, shall have full right and authority to manage the affairs of, and the exclusive right to elect the directors of, the Association (who need not be Owners) until the following shall occur:

**A.** When fifteen percent (15%) or more of the Units that will be operated ultimately by the Association are conveyed to Owners other than Developer, such Owners (other than Developer) shall be entitled to elect not less than one-third (1/3) of the Board of Directors.

B. Owners other than Developer will be allowed to elect a majority of the Members of the Board of Directors and control the Association at whichever of the following times shall first occur (the "Turnover Date").

1. Three (3) years after Developer has sold fifty (50%) percent of the Units that will be ultimately operated by the Association;
2. Three (3) months after Developer has sold ninety (90%) percent of the Units that will be ultimately operated by the Association;
3. When all of the Units that will ultimately be operated by the Association have been completed and some of them have been sold and none of the others are being offered for sale by Developer in the ordinary course of business.
4. When Developer has sold some of the Units and none of the other Units are held by the Developer for sale in the ordinary course of business; or
5. Seven (7) years after recordation of the Declaration.

C. Developer shall be entitled to elect at least one (1) member of the Board of Directors as long as Developer holds at least five percent (5%) of the Units in the Condominium for sale in the ordinary course of business. So long as the Developer holds Units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

1. Assessment of the Developer as Unit Owner for capital improvements.
2. Any action by the Association that would be detrimental to the sales of Units by the Developer. However, an increase in Assessments for Common Expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of Units.

D. On the Turnover Date, the Association shall execute in favor of the Developer a receipt and acknowledgment of all items delivered to the Association by the Developer and a commitment to maintain and operate all systems and equipment within the Condominium Property in accordance with the operating manuals and warranties therefor.

#### ARTICLE XIII 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 by the Bylaws.

#### ARTICLE XIV INCORPORATOR

The names and street addresses of the Incorporator of the Association is as follows:

<u>Name</u>	<u>Address</u>
Kathryn Mansfield	3100 Monticello Ave., Suite 200, Dallas, TX 75205

#### ARTICLE XV AMENDMENTS

The Association reserves the right to amend, alter, change or repeal any provisions contained in these Articles of Incorporation by a simple majority vote of all voting rights of all Members of the Association and all rights conferred upon the Members herein are granted subject to this reservation. Notwithstanding the foregoing, no amendment to these Articles of

Incorporation may be adopted which in any way alters or modifies the rights, obligations, benefits or provisions relating to any Commercial or Roof Unit or Owner thereof as the same are set forth herein, without the prior written consent thereto by the affected Owner.

**ARTICLE XVI  
PRINCIPAL PLACE OF BUSINESS AND MAILING ADDRESS**

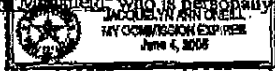
The Association's principal place of business is 200 E. Las Olas Blvd., Ste. 1660, Ft. Lauderdale, FL 33301. The Association's mailing address is 3100 Monticello Ave., Suite 200 Dallas, TX 75203.

IN WITNESS WHEREOF, the undersigned incorporator has hereunto affixed his signature this 19<sup>th</sup> day of May, 2005.

*Kathryn Mansfield*  
Kathryn Mansfield, Incorporator

STATE OF TEXAS  
COUNTY OF DALLAS

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of May, 2005, by Kathryn Mansfield, who is personally known to me.



(NOTARIAL SEAL)

*Jacquelyn Ann O'Neill*  
Jacquelyn Ann O'Neill  
(Print Name of Notary Public)  
Notary Public - State of Texas  
My Commission Expires: June 4, 2005

**ACCEPTANCE BY REGISTERED AGENT**

The undersigned hereby accepts the designation as registered agent of the foregoing corporation.

**CHRIS BRYAN**  
**SPECIAL ASSISTANT SECRETARY**

By: *Chris Bryan*