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**FLORIDA PROFIT/NON PROFIT CORPORATION**

**De Soleil South Beach Association, Inc.**

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**ARTICLES OF INCORPORATION  
OF  
DE SOLEIL SOUTH BEACH ASSOCIATION, INC.  
(A Florida Corporation Not For Profit)**

In order to form a corporation not for profit under and in accordance with the provisions of Chapter 617 of the Florida Statutes, the undersigned hereby incorporates this corporation not for profit for the purposes and with the powers hereinafter set forth and, to that end, the undersigned, by these Articles of Incorporation, certifies as follows:

**ARTICLE I  
DEFINITIONS**

The following words and phrases when used in these Articles of Incorporation (unless the context clearly reflects another meaning) shall have the following meanings:

1. "Articles" means these Articles of Incorporation and any amendments hereto.
2. "Assessment" means any charges which may be assessed under the Declaration from time to time against an Owner.
3. "Building" means the improvements which include the Garage Parcel, the Commercial Parcel and the Residential Parcel combined, and more particularly, a five (5)-story mixed-use building located upon the Land and as described in the Declaration.
4. "Bylaws" means the Bylaws of the Association and any amendments thereto.
5. "Condominium Act" means Chapter 718, Florida Statutes, in effect on the date the Residential Condominium Declaration and/or the Commercial Condominium Declaration (whichever occurs first) is filed in the Public Records of the County.
6. "Condominium Unit" means a Commercial Condominium Unit or a Residential Condominium Unit, generally, as the context requires.
7. "County" means the County of Miami-Dade.
8. "Declaration" means the Declaration of Master Covenants, Easements & Restrictions for De Soleil South Beach to be recorded amongst the Public Records of the County, as it may be amended or supplemented from time to time.
9. "De Soleil Documents" means the Declaration, these Articles and the Bylaws.
10. "Developer" means South Beach Resort Development, LLC, a Florida limited liability company, and any successor or assignee of the rights and obligations of Developer under the Declaration provided that no Owner, solely by reason of its purchasing a Parcel or a Condominium Unit therein, shall be considered a successor or assignee of such rights and obligations unless it is

FTL:739572:6

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specifically designated as such in an instrument executed by Developer. Provided, however, that any party succeeding to Developer's interest in any Parcel through foreclosure of a first mortgage lien or deed in lieu of foreclosure shall have the right but not the obligation to assume the rights and obligations of Developer, whether or not Developer has executed an instrument designating such lien holder as Developer.

11. "Garage Parcel" means the real property legally described in Exhibit "A-1" attached to the Declaration, together with all improvements now or hereafter located thereon, generally including the Parking Garage but excluding the Commercial Parcel and the Residential Parcel.

12. "Commercial Parcel" means the property legally described in Exhibit "A-2" attached to the Declaration, together with all improvements now or hereafter located therein, generally including the first (1<sup>st</sup>) floor of the Building.

13. "Commercial Condominium Association" means the not-for-profit corporation formed or to be formed to operate the Commercial Parcel. For purposes of the Declaration, the Commercial Condominium Association shall be deemed the Owner of the Commercial Parcel upon the recording of the Commercial Condominium Declaration; it being acknowledged, however, that the Commercial Condominium Association will not have or hold actual title to the Commercial Parcel.

14. "Commercial Condominium Declaration" means the Declaration of Condominium which may be recorded by Developer submitting the Commercial Parcel to the provisions of the Condominium Act, together with all exhibits to the Commercial Condominium Declaration, as such Commercial Condominium Declaration and exhibits thereto may be amended from time to time.

15. "Commercial Condominium Units" means the condominium units constructed upon the Commercial Parcel, and any additions or replacements thereto.

16. "Residential Parcel" means the property legally described in Exhibit "A-3" attached to the Declaration, together with all improvements therein, now or hereafter located therein, generally including the second (2<sup>nd</sup>) through the fourth (4<sup>th</sup>) floors and the roof of the Building.

17. "Residential Condominium Association" means the not-for-profit corporation formed or to be formed to operate the Residential Parcel. For purposes of the Declaration, the Residential Condominium Association shall be deemed the Owner of the Residential Parcel upon the recording of the Residential Condominium Declaration; it being acknowledged, however, that the Residential Condominium Association will not have or hold actual title to the Residential Parcel.

18. "Residential Condominium Declaration" means the Declaration of Condominium which may be recorded by Developer submitting the Residential Parcel to the provisions of the Condominium Act, together with all exhibits to the Residential Condominium Declaration, as such Residential Condominium Declaration and exhibits thereto may be amended from time to time.

19. "Residential Condominium Units" means the Residential units constructed upon the Residential Parcel, and any additions or replacements thereto.

FTL:739572:6

20. "Land" shall mean the land owned by Developer on which Developer shall or has caused the Building to be constructed, which Land shall be owned by the Garage Parcel Owner, and which is the land described in the legal description which is attached to the Declaration as Exhibit "A".

21. "Maintenance" means, and shall include with regard to any particular component of the Building and the Land, the maintenance (including, but not limited to, painting and other decorating), operation, inspection (including, but not limited to, inspection for the purpose of meter reading), testing, repair, preservation, replacement and/or cleaning (including, but not limited to, dusting, washing, mopping and vacuuming) thereof, as well as any other action commonly or customarily regarded as maintenance.

22. "Master Association" means the De Soleil South Beach Association, Inc., a Florida not-for-profit corporation, which shall have as its members the Residential Condominium Association, the Commercial Condominium Association and the Owner of the Garage Parcel.

23. "Mortgagee" means any holder of a first mortgage lien on a Parcel, or on a leasehold interest in an entire Parcel, or on a Condominium Unit within the Commercial Parcel, or on a Residential Condominium Unit within the Residential Condominium Parcel, which mortgage is security for a loan advanced in good faith to finance the purchase of rights in and/or construction of the Parcel or Condominium Unit in question or to refinance a loan of such nature, provided that such holder shall give notice, as prescribed in §17.4 of the Declaration, to the parties prescribed in such §17.4, that it is the holder of such mortgage prior to being considered a Mortgagee for purposes hereof.

24. "Owner" means the Owner of the Garage Parcel, the Commercial Parcel or the Residential Parcel, individually, as the context shall require. For purposes of the De Soleil Documents, once a condominium declaration is recorded amongst the public records of the County with respect to a Parcel, the condominium association governing such condominium shall be deemed to be the Owner of such Parcel.

25. "Owners" means the Owners of the Garage Parcel, the Commercial Parcel or the Residential Parcel, collectively, as the context shall require.

26. "Parcel" means the Commercial Parcel, the Garage Parcel or Residential Parcel, individually, as the context shall require.

27. "Parcels" means the Garage Parcel, the Commercial Parcel and Residential Parcel, collectively, as the context shall require.

28. "Parking Garage" shall mean the parking facility constructed within and as part of the Building and the Garage Parcel.

29. "Shared Expenses" means the actual and estimated cost of Maintenance of the Shared Facilities as described in the Declaration (including unpaid "Assessments" [as defined in the

FTL:739572:6

Declaration] not paid by the Owner responsible for payment); all costs of the Association incurred in the performance of its duties; the costs of management and administration of the Shared Facilities, including, but not limited to, costs incurred for the services of managers, accountants, attorneys and employees; costs of providing services, personnel or equipment for the Shared Facilities; costs of all cleaning and other services benefiting the Shared Facilities; costs of comprehensive general liability insurance for the Shared Facilities, workmen's compensation insurance and other insurance covering or connected with the Shared Facilities; real and personal property taxes for the Shared Facilities, if any; costs of funding any reserve funds established for replacement, deferred maintenance, repair and upgrading of the Shared Facilities and personal property thereon; and costs of all other items or services incurred by the Association for any reason whatsoever in connection with the Shared Facilities or for the benefit of the Owners.

30. "Shared Facilities" means those portions, components, features or systems of the Building which by purpose, nature, intent or function afford benefits to or serve more than one Parcel in the Building, rather than a single Parcel exclusively, including those which are declared to be Shared Facilities in the Declaration.

Unless otherwise defined herein, the terms defined in the Declaration are incorporated herein by reference and shall appear in initial capital letters each time such terms appears in these Articles.

## **ARTICLE II**

### **NAME**

The name of this corporation shall be DE SOLEIL SOUTH BEACH ASSOCIATION, INC., a Florida corporation not for profit, whose principal address and mailing address is 1501 Collins Avenue, Suite 300, Miami Beach, Florida 33139.

## **ARTICLE III**

### **PURPOSES**

The purpose for which the Master Association is organized is to take title to, operate, administer, manage, lease and maintain the Shared Facilities within the Building in accordance with the terms of, and purposes set forth in, the Declaration and to carry out the covenants and enforce the provisions of the Declaration. It is not intended that this Master Association become a condominium association within the meaning of the Condominium Act.

## **ARTICLE IV**

### **POWERS**

The Master Association shall have the following powers and shall be governed by the following provisions:

A. The Master Association shall have all of the common law and statutory powers of a corporation not for profit.

B. The Master Association shall have all of the powers granted to the Master Association

FTL:739572:6

in the De Soleil Documents. All of the provisions of the Declaration and Bylaws which grant powers to the Master Association are incorporated into these Articles.

C. The Master Association shall have all of the powers reasonably necessary to implement the purposes of the Master Association, including, but not limited to, the following:

1. To perform any act required or contemplated by it under the De Soleil Documents.

2. To make, establish, amend and enforce reasonable rules and regulations governing the use of the Shared Facilities.

3. To make, levy and collect Assessments for the purpose of obtaining funds from its "Members" (as hereinafter defined) to pay Shared Expenses and other costs defined in the Declaration and costs of collection, and to use and expend the proceeds of Assessments in the exercise of the powers and duties of the Master Association.

4. To maintain, repair, replace and operate the Shares Facilities in accordance with the De Soleil Documents.

5. To enforce by legal means the obligations of the Members and the provisions of the De Soleil Documents.

6. To employ personnel, retain independent contractors and professional personnel, and enter into service contracts to provide for the maintenance, operation, administration and management of the Shared Facilities and to enter into any other agreements consistent with the purposes of the Master Association, including, but not limited to, agreements with respect to professional management of the Shared Facilities and to delegate to such professional manager certain powers and duties of the Master Association.

7. To enter into the Declaration and any amendments thereto and instruments referred to therein.

8. To provide, to the extent deemed necessary by the Board, any and all services and do any and all things which are incidental to or in furtherance of things listed above or to carry out the Master Association mandate to keep and maintain the Building in a proper and aesthetically pleasing condition and to provide the Owners with services, amenities, controls and enforcement which will enhance the quality of life at the Building.

9. Notwithstanding anything contained herein to the contrary, the Master Association shall be required to obtain the approval of two-thirds (2/3) of all Members (at a duly called meeting of the Members at which a quorum is present) prior to the engagement of legal counsel by the Master Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- (a) the collection of Assessments;

(b) the collection of other charges which Owners are obligated to pay pursuant to the De Soleil Documents;

(c) the enforcement of any applicable use and occupancy restrictions contained in the De Soleil Documents;

(d) dealing with an emergency when waiting to obtain the approval of the Members creates a substantial risk of irreparable injury to the Shares Facilities or to Member(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of two-thirds (2/3) of the Members); or

(e) filing a compulsory counterclaim.

#### ARTICLE V MEMBERS AND VOTING

The qualification of Members of the Master Association, the manner of their admission to membership, the manner of the termination of such membership and the manner of voting by Members shall be as follows:

A. Until such time as either (1) the first deed of conveyance of a Parcel from Developer to an Owner or (2) a declaration of condominium with respect to one of the Parcels, is recorded amongst the Public Records of the County (collectively and individually, the "First Conveyance"), the membership of the Master Association shall be comprised solely of the incorporator of these Articles ("Incorporator"). The Incorporator shall be entitled to cast one (1) vote on all matters requiring a vote of the membership.

B. Upon the First Conveyance, membership of the Incorporator in the Master Association shall be automatically terminated and thereupon Developer shall be a Member as to each of the remaining Parcels until each such Parcel is conveyed to another Owner, or a declaration of condominium with respect to such Parcel is recorded, and thereupon and thereafter each and every Owner, including Developer as to Parcels owned by Developer, shall be a Member and exercise all of the rights and privileges of a Member.

C. Membership in the Master Association for Owners other than Developer shall be established by the acquisition of ownership of fee simple title to a Parcel as evidenced by the recording of an instrument of conveyance amongst the Public Records of the County. Where title to a Parcel is acquired by conveyance from a party other than Developer by means of sale, gift, inheritance, devise, judicial decree or otherwise, the person, persons or entity thereby acquiring such Parcel shall not be a Member unless or until such Owner shall deliver a true copy of a deed or other instrument of acquisition of title to the Master Association. Upon the recording of a declaration of condominium with respect to a Parcel, the condominium association responsible for the operation of such condominium shall be deemed the Owner of such Parcel for purposes of these Articles.

D. The Master Association shall have three (3) classes of voting membership:  
FTL:739572:8

1. "Class A Members" shall be all Members, with the exception of Developer while Developer is a Class B Member, each of whom shall be entitled to one (1) vote for each Parcel owned.

2. "Class B Members" shall be Developer, who shall be entitled to two times the total number of votes of the Class A Members plus one. Class B membership shall cease and be converted to Class A membership upon the earlier to occur of the following events ("Turnover Date"):

(a) Three (3) months after two of the three Parcels in the Building either have been conveyed or had a condominium created on any such Parcel, as evidenced by the recording amongst the Public Records of the County, of an instrument of conveyance or declaration of condominium with respect to such Parcel; or

(b) At such time as Developer shall designate in writing to the Master Association.

On the Turnover Date, Class A Members, including Developer, shall assume control of the Master Association and appoint directors as provided in Article X of these Articles.

E. The designation of different classes of membership are for purposes of establishing the number of votes applicable to certain Parcels, and nothing herein shall be deemed to require voting solely by an individual class on any matter which requires the vote of Members, unless otherwise specifically set forth in the De Soleil Documents.

F. No Member may assign, hypothecate or transfer in any manner its membership in the Master Association except as an appurtenance to its Parcel.

G. Any Member who conveys or loses title to a Parcel by sale, gift, devise, bequest, judicial decree or otherwise shall, immediately upon such conveyance or loss of title, no longer be a Member with respect to such Parcel and shall lose all rights and privileges of a Member resulting from ownership of such Parcel.

H. There shall be only one (1) vote for each Parcel, except for the Class B Members as set forth herein. If there is more than one Member with respect to a Parcel as a result of the fee interest in such Parcel being held by more than one person, such Members collectively shall be entitled to only one (1) vote. The vote of the Owners of a Parcel owned by more than one natural person or by a corporation or other legal entity shall be cast by the person named in a certificate signed by all of the Owners of the Parcel, or, if appropriate, by properly designated officers, partners or principals of the respective legal entity ("Voting Member"), and filed with the Secretary of the Master Association, and such certificate shall be valid until revoked by a subsequent certificate. If such a certificate is not filed with the Secretary of the Master Association, the vote of such Parcel shall not be considered for a quorum or for any other purpose.

Notwithstanding the foregoing provisions, whenever any Parcel is owned by a husband and

FTL:739572:6



wife they may, but shall not be required to, designate a Voting Member. In the event a certificate designating a Voting Member is not filed by the husband and wife, the following provisions shall govern their right to vote:

1. When both are present at a meeting, each shall be regarded as the agent and proxy of the other for purposes of casting the vote for each Parcel owned by them. In the event they are unable to concur in their decision upon any topic requiring a vote, they shall lose their right to vote on that topic at that meeting, but shall count for purposes of establishing a quorum.

2. When only one (1) spouse is present at a meeting, the person present may cast the Parcel vote without establishing the concurrence of the other spouse, absent any prior written notice to the contrary by the other spouse. In the event of prior written notice to the contrary to the Master Association by the other spouse, the vote of said Parcel shall not be considered, but shall count for purposes of establishing a quorum.

3. When neither spouse is present, the person designated in a "Proxy" (as defined in the Bylaws) signed by either spouse may cast the Parcel vote, when voting by Proxy is allowed, absent any prior written notice to the contrary to the Master Association by the other spouse or the designation of a different Proxy by the other spouse. In the event of prior written notice to the contrary to the Master Association or the designation of a different Proxy by the other spouse, the vote of said Parcel shall not be considered, but shall count for purposes of establishing a quorum.

I. A quorum shall consist of persons entitled to cast at least two-thirds (2/3) of the total number of votes of the Members.

#### ARTICLE VI TERM

The term for which this Master Association is to exist shall be perpetual. In the event of dissolution of the Master Association (unless same is reinstated), other than incident to a merger or consolidation, all of the assets of the Master Association shall be conveyed to a similar not for profit corporation or a public agency having a similar purpose, or any Member may petition the appropriate circuit court of the State of Florida for the appointment of a receiver to manage the affairs of the dissolved Master Association and its properties in the place and instead of the dissolved Master Association and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Master Association and its properties.

#### ARTICLE VII INCORPORATOR

The name and address of the Incorporator of these Articles is:

Ronald S. Molko  
1501 Collins Avenue, Suite 300  
Miami Beach, FL 33139

**ARTICLE VIII**  
**OFFICERS**

The affairs of the Master Association shall be managed by the President of the Master Association, assisted by the Vice President(s), Secretary and Treasurer, and, if any, by the Assistant Secretary(ies) and Assistant Treasurer(s), subject to the directions of the Board. Except for officers elected prior to the Turnover Date, officers must be Members, or the parents, children, spouses, officers, directors, shareholders, partners, or members of Members.

The Board shall elect the President, Secretary and Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall, from time to time, determine. The President shall be elected from amongst the membership of the Board, but no other officer need be a Director. The same person may hold two offices, the duties of which are not incompatible; provided, however, the office of President and a Vice President shall not be held by the same person, nor shall the office of President and Secretary or Assistant Secretary be held by the same person.

**ARTICLE IX**  
**FIRST OFFICERS**

The names of the officers who are to serve until the first election of officers by the Board are as follows:

President	Ronald S. Molko
Secretary/Treasurer	Gene Grabarnick

**ARTICLE X**  
**BOARD OF DIRECTORS**

A. The number of Directors on the Board of Directors of the Master Association shall be three (3). Except for Developer-appointed Directors, Directors must be Members or the parents, children, spouses, officers, directors, shareholders, partners, or members of Members. There shall be only one (1) vote for each Director.

B. The names and addresses of the persons who are to serve as Directors on the first Board are as follows:

NAMESADDRESSES

Ronald S. Molko

1501 Collins Avenue, Suite 300  
Miami Beach, FL 33139

Gene Grabarnick

1501 Collins Avenue, Suite 300  
Miami Beach, FL 33139

Garrett Grabarnick

1501 Collins Avenue, Suite 300  
Miami Beach, FL 33139

Developer reserves the right to replace and/or designate and elect successor Directors to serve on the first Board for so long as the first Board is to serve, as hereinafter provided.

C. Upon the Turnover Date, each Member shall appoint one Director to the Board.

D. The Board shall continue to be so designated, as described in Paragraph C above, at each subsequent "Annual Members' Meeting" (as defined in the Bylaws).

A Director (other than a Developer-appointed Director) may be removed from office only by the Member who appointed such Director.

E. Upon the resignation of a Director who has been designated by Developer or the resignation of an officer of the Master Association who has been elected by the first Board, the Master Association and all of the Members of the Master Association shall be deemed to remise, release, acquit, satisfy and forever discharge such officer or Director of and from any and all manner of action(s), cause(s) of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which the Master Association or Members had, now have or will have or which any personal representative, successor, heir or assign of the Master Association or Members hereafter can, shall or may have against said officer or Director for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of such resignation, except for such Director's or officer's willful misconduct or gross negligence.

ARTICLE XI  
INDEMNIFICATION

Each and every Director and officer of the Master Association shall be indemnified by the Master Association against all costs, expenses and liabilities, including attorney and paralegal fees at all trial and appellate levels and postjudgment proceedings, reasonably incurred by or imposed upon him in connection with any negotiation, proceeding, arbitration, litigation or settlement in which he becomes involved by reason of his being or having been a Director or officer of the Master Association, and the foregoing provision for indemnification shall apply whether or not such person is a Director or officer at the time such cost, expense or liability is incurred. Notwithstanding the above, in the event of any such settlement, the indemnification provisions provided in this Article XI

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shall not be automatic and shall apply only when the Board approves such settlement and reimbursement for the costs and expenses of such settlement as being in the best interest of the Master Association, and in the event a Director or officer admits that he is or is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties, the indemnification provisions of this Article XI shall not apply. The foregoing right of indemnification provided in this Article XI shall be in addition to and not exclusive of any and all rights of indemnification to which a Director or officer of the Master Association may be entitled under statute or common law.

#### ARTICLE XII BYLAWS

The Bylaws shall be adopted by the first Board, and thereafter may be altered, amended or rescinded in the manner provided for in the Bylaws. In the event of any conflict between the provisions of these Articles and the provisions of the Bylaws, the provisions of these Articles shall control.

#### ARTICLE XIII AMENDMENTS

A. Prior to the First Conveyance, these Articles may be amended only by an instrument in writing signed by the incorporator of these Articles and filed in the Office of the Secretary of State of the State of Florida.

B. After the First Conveyance, and after the Turnover Date, these Articles may be amended solely by a majority vote of the Board, without the prior consent of the Members, at a duly called meeting of the Board.

An amendment may be adopted by a written statement (in lieu of a meeting) signed by all Directors setting forth their intention that an amendment to the Articles be adopted.

C. Notwithstanding any provisions of this Article XIII to the contrary, these Articles shall not be amended in any manner which shall prejudice the rights of: (i) Developer, without the prior written consent thereto by Developer, for so long as Developer holds either a leasehold interest in or title to at least one (1) Parcel or any portion thereof; and (ii) any Mortgagee without the prior written consent of such Mortgagee.

D. Notwithstanding the foregoing provisions of this Article XIII, no amendment to these Articles shall be adopted which shall abridge, amend or alter the rights of Developer hereunder, including, but not limited to, Developer's right to designate and select members of the first Board or otherwise designate and select Directors as provided in Article X hereof.

E. Any instrument amending these Articles shall identify the particular article or articles being amended and shall provide a reasonable method to identify the amendment being made. A certified copy of each such amendment shall be attached to any certified copy of these Articles, and a copy of each amendment certified by the Secretary of State shall be recorded amongst the Public Records of the County.

FTL:739572:6

ARTICLE XIV  
REGISTERED OFFICE AND REGISTERED AGENT

The street address of the initial registered office of the Master Association is 1501 Collins Avenue, Suite 300, Miami Beach, Florida 33139 and the initial registered agent of the Master Association at that address shall be Ronald S. Molko.

IN WITNESS WHEREOF, the Incorporator has hereunto affixed his signature, this 16  
day of JUNE, 2006.

  
\_\_\_\_\_  
Ronald S. Molko

The undersigned hereby accepts the designation of Registered Agent as set forth in Article XIV of these Articles of Incorporation, and acknowledges that he is familiar with and accepts the obligations imposed upon registered agents under the Florida Not-For Profit Corporation Act.

  
\_\_\_\_\_  
Ronald S. Molko

Dated: JUNE 16, 2006

STATE OF FLORIDA )

)SS:

COUNTY OF MIAMI-DADE )

The foregoing instrument was acknowledged before me this 16 day of JUNE, 2006, by Ronald S. Molko, the person described as the Incorporator of these Articles who executed the foregoing Articles of Incorporation, who is personally known to me.

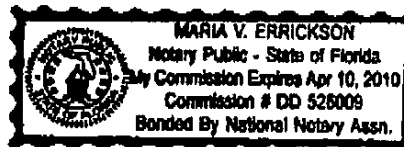
  
\_\_\_\_\_  
Notary Public

MARIA V. ERRICKSON

Printed, Typed or Stamped Notary Name

My Commission Expires:

4/10/2010



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