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Brickell Financial Owners Association, Inc.

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TALLAHASSEE, FLORIDA

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**ARTICLES OF INCORPORATION
OF
BRICKELL FINANCIAL OWNERS ASSOCIATION, INC.**

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

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The undersigned incorporator, by these Articles, forms a corporation not for profit pursuant to Chapter 617 of the laws of the State of Florida, and adopts the following Articles of Incorporation:

ARTICLE 1

NAME AND ADDRESS

The name of the corporation shall be BRICKELL FINANCIAL OWNERS 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 place of business and mailing address of the Association is 777 Brickell Avenue, Suite 808, Miami, Florida 33131.

ARTICLE 2

PURPOSE

The purpose for which the Association is organized is to provide an entity to own, operate, maintain, manage, repair, administer and otherwise deal with certain real property located in Miami, Florida ("Property") more particularly described in, and to be governed by, an Easement and Operating Agreement made by Brickell Holdings, LLC and Brickell Financial Center, LLC ("Agreement") to be recorded in the Public Records of Miami-Dade County, Florida, and for such other purposes set forth in the Agreement.

The Association is not organized for profit and no part of the net earnings, if any, shall inure to the benefit of any Member or other Person.

ARTICLE 3

DEFINITIONS

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

ARTICLE 4

POWERS

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

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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 Agreement or the By-Laws.

4.2 **Enumeration.** In addition to, and not in limitation of, the powers described in Section 4.1, the Association shall have all of the powers and duties reasonably necessary to operate the Public Areas and to exercise such powers, duties and obligations described in the Agreement, as it may be amended from time to time, including, but not limited to, the following:

- (a) To make and collect Assessments and other charges against Parcel Owners, and to use the proceeds in the exercise of its powers and duties.
- (b) To acquire, buy, own, operate, lease, sell, trade and mortgage both real and personal property as may be necessary or convenient in the administration of the Public Areas and to lease the Public Areas for special events and private functions.
- (c) To maintain, repair, replace, reconstruct, add to and operate the Public Areas, and other property acquired or leased by the Association for use by Parcel Owners and the general public, but the Association shall have the right to close the Public Areas at such times in its judgment as is necessary to prevent a dedication of the Public Areas to the general public.
- (d) To purchase insurance upon the Public Areas and insurance for the protection of the Association, its officers, directors and Members as Parcel Owners.
- (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Public Areas and for the health, comfort, safety and welfare of Parcel Owners.
- (f) To enforce by legal means the provisions of the Agreement, these Articles, the By-Laws, and the rules for the use of the Public Areas.
- (g) To contract for the management of the Public Areas to assist the Association in carrying out the powers and duties of the Association contained in these Articles or in the Agreement. In exercising this power, the Association may contract with affiliates of itself and/or Forum Group at customary rates and terms available from non-affiliated parties.
- (h) To employ personnel to perform the services required for the proper operation of the Public Areas.

4.3 **Property.** All funds and the titles of 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 Agreement, these Articles and the By-Laws.

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4.4 **Distribution of Income.** The Association shall make no distribution of Income to its members, directors or officers. All income shall be applied against expenses incurred by the Association and, upon dissolution, all assets of the Association shall be transferred only to another non profit corporation or public agency.

4.5 **Limitation.** The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of these Articles and of the Agreement and the By-Laws.

ARTICLE 5

MEMBERS

5.1 **Membership.** The members of the Association ("Members") shall consist of all of the record Parcel Owners from time to time of fee title to Parcels on the Property.

5.2 **Classes of Membership.** The Association shall have two classes of Members:

- (a) **Class A.** Class A Members shall consist of all Phase 1 Owners.
- (b) **Class B.** Class B Members shall consist of all Phase 2 Owners.

5.3 **Voting.**

- (a) Each Class A Member shall be entitled to one membership interest, and all Class A Members shall collectively be entitled to six votes. Such votes may be allocated among the Class A Members as the initial Class A Member shall determine but each Class A Member shall be entitled to at least one vote for each Parcel owned.
- (b) Each Class B Member shall be entitled to one membership interest and all Class B Members shall collectively be entitled to four votes. Such votes shall be allocated among the Class B Members as the initial Class B Member shall determine but each Class B Member shall be entitled to at least one vote for each Parcel owned.
- (c) Certain matters, referred to as "Major Decisions," may require the approval of both Class A Members and Class B Members as described in the By-Laws.

5.4 **Multiple Ownership.**

(a) When more than one Person holds title to a Parcel, all such Persons shall be Members, and the vote associated with such Parcel shall be exercised as they among themselves determine, but in no event shall more than the number of allocated votes be cast with respect to any such Parcel. The vote of Parcel Owners of a Parcel owned by more than one Person shall be cast by the person ("Voting Member") named in a certificate signed by all owners of the Parcel, or, if appropriate, by properly designated officers, partners or principals of

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the legal entity owning such Parcel, and filed with the Secretary of the Association, and such certificate shall be valid until revoked by a subsequent such certificate. If such certificate is not filed with the Secretary of the Association, the vote for such Parcel shall not be considered.

(b) Notwithstanding the provisions of Section 5.5(a), whenever any Parcel is owned by a husband and wife, they may, but shall not be required to, designate a Voting Member.

5.5 Meetings of Members. The By-Laws shall provide for an annual meeting of Members, make provision for regular and special meetings of Members other than the annual meeting and set the quorum requirements for meetings of the Members.

5.6 No Transfer or Hypothecation. No Member may assign, hypothecate or transfer in any manner the Member's membership or voting rights in the Association except as an appurtenance to Member's Parcel.

5.7 Loss of Membership. Any Member who conveys or loses title to a Parcel by sale, gift, 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.

ARTICLE 6

TERM OF EXISTENCE

The Association shall have perpetual existence.

ARTICLE 7

INCORPORATOR

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

<u>NAME</u>	<u>ADDRESS</u>
Danet Linares	777 Brickell Avenue Suite 808 Miami, Florida 33131

ARTICLE 8

DIRECTORS

8.1 Number and Qualification. The property, business and affairs of the Association shall be managed by a board consisting of five directors. Directors need not be Members of the Association or Parcel Owners. The Class A Members shall be entitled to elect or designate three Directors. The Class B Members shall be entitled to elect or designate two Directors. No elections need be held for either Class A Directors or Class B Directors during the

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period that the Phase 1 Property or Phase 2 Property, as applicable, is held by a single Parcel Owner. Such Parcel Owner shall designate the Directors to represent its particular class. At such time as either the Phase 1 Property or Phase 2 Property has multiple Parcel Owners then such multiple Parcel Owners shall elect the Class A or Class B Directors, as applicable, in accordance with a procedure adopted by the initial Class A Member or Class B Member, as applicable.

8.2 **Removal; Vacancy.** Any Director designated or elected by a particular Class of Members may be removed at any time only by the Members of such Class designating or electing such Director. Any vacancy on the Board of Directors caused by such removal or any resignation of a Director shall be filled only by the particular Class Members removing such Director or otherwise entitled to appoint such a Director.

8.3 **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 qualified, as provided in the By-Laws, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Danet Linares	777 Brickell Avenue Suite 808 Miami, Florida 33131
John Breistol	777 Brickell Avenue Suite 808 Miami, Florida 33131
Tracy Story	777 Brickell Avenue Suite 808 Miami, Florida 33131
Loretta Cockrum	777 Brickell Avenue Suite 808 Miami, Florida 33131
William Urban	777 Brickell Avenue Suite 808 Miami, Florida 33131

8.4 **Standards of Conduct.** A Director shall discharge his or her 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 or her 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

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competent in the manners presented; legal counsel, public accountants or other persons as to matters the Director reasonably believes are within such person's 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 or her office in compliance with the foregoing standards.

ARTICLE 9

OFFICERS

The affairs of the Association shall be administered by the officers holding the offices designated in the By-Laws. The officers shall be elected by the Board of Directors of the Association 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 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:

President:	Loretta Cockrum
Vice President	Danet Linares
Secretary	Tracy Story
Treasurer:	William Urban
Assistant Secretary:	John Breistol

ARTICLE 10

INDEMNIFICATION

10.1 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 proceeding, whether civil, criminal, administrative or investigative (collectively "Action"), by reason of the fact that he or she is or was a director, employee, officer or agent of the Association (collectively "Association Person"), against expenses (including attorneys' fees and appellate attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Association Person in connection with such Action, if the Association Person acted in good faith and in a manner the Association Person reasonably believed to be in, or not opposed to, the best interests of the Association and with respect to any criminal action or proceeding, had no reason to believe the Association Person's conduct was unlawful. The Association shall not, however, indemnify any Association Person as to matters to which the Association Person shall be finally adjudged in any such Action to be liable for gross negligence or gross misconduct in the performance of the Association Person's duty. The termination of any Action by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption of gross negligence or gross misconduct. The foregoing right of indemnification shall be in addition to any other rights to which an Association Person may be entitled as a matter of law or otherwise.

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10.2 **Expenses.** To the extent that an Association Person has been successful on the merits or otherwise in defense of any Action, or in defense of any claim, issue or matter such Action, the Association Person shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred in such Action.

10.3 **Approval.** Any indemnification under Section 10.1 (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Association Person is proper under the circumstances because the Association Person has met the applicable standard of conduct set forth in Section 10.1. 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 Action, or (b) if such quorum is not obtainable, or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by a majority of the Members.

10.4 **Advances.** Expenses incurred in defending an Action may be paid by the Association in advance of the final disposition of such Action, as authorized by the Board of Directors in any specific case upon receipt of an undertaking by or on behalf of the Association Person to repay such amount unless it shall ultimately be determined that the Association Person is entitled to be indemnified by the Association as authorized in this Article 10.

10.5 **Miscellaneous.** The indemnification 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, and shall continue as to a person who has ceased to be a Association Person and shall inure to the benefit of the heirs and personal representatives of such person.

10.6 **Insurance.** The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was an Association Person 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 or her and incurred by him or her in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him or her against such liability under the provisions of this Article.

ARTICLE 11

BY-LAWS

The first By-Laws of the Association shall be deemed adopted by the Board of Directors upon their inclusion in the recorded Agreement and may be altered, amended or rescinded by the Directors or Members in the manner provided in the By-Laws.

ARTICLE 12

AMENDMENTS

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

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12.1 **Notice.** Written notice setting forth the proposed amendment or a summary of the changes to be effected shall be included in the notice of any meeting at which the proposed amendment is to be considered or in any written instrument purporting to take action in lieu of a meeting as may be permitted by the By-Laws and shall be given to every Member and Director.

12.2 **Adoption.** A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board of Directors or by not less than one-third of the Members of the Association. Directors and Members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing the approval is delivered to the Secretary at or prior to the meeting. The approvals must be:

- (a) by not less than 80% of the votes of all of the Members either at a meeting or by expressing their written consent; or
- (b) by not less than 100% of the Board of Directors.

12.3 **Limitation.** No amendment shall make any changes in: the qualifications of membership; the voting rights or property rights of Members; or Sections 4.3, 4.4 or 4.5 of Article 4, entitled "Powers" or this Section 12.3, without the approval in writing of all Members and the joinder of all Mortgagees. No amendment shall be made that is in conflict with the Agreement. No amendment to these Articles shall be made which adversely affects the rights of Mortgagees without the prior written consent of the holders of Mortgages.

12.4 **Recording.** A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the public records of the County.

ARTICLE 13

OFFICE; REGISTERED AGENT

The street address of the initial registered office of the Association shall be 777 Brickell Avenue, Suite 808, Miami, Florida 33131; and the name of the initial registered agent at that address is Loreita Cockrum.

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation as Incorporator thereof as August 11, 2008.

Danet Linares

Danet Linares, Incorporator

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**ACCEPTANCE OF APPOINTMENT
AS REGISTERED AGENT**

The undersigned, who has been designated in the foregoing Articles of Incorporation as registered agent for the corporation therein named, agrees that the undersigned (i) accepts such appointment as registered agent and will accept service of process for and on behalf of said corporation, and (ii) is familiar with and will comply with any and all laws relating to the complete and proper performance of the duties and obligations of a registered agent of a Florida corporation.

Dated: August 11, 2008.


Loretta Cockrum, Registered Agent

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