

Hughes Hubbard & Reed LLP

N96000004853

September 17, 1996

201 South Biscayne Boulevard  
Miami, Florida 33131-4330  
Telephone: 305-398-1666  
Facsimiles: 305-371-6719

RECEIVED  
SEP 19 1996  
12 09:52

**VIA EXPRESS MAIL**

Corporate Records Bureau  
Division of Corporations  
409 East Gaines Street  
P.O. Box 6327  
Tallahassee, Florida 32301

700001950507  
-09/18/96--01062--009  
\*\*\*\*122.50 \*\*\*\*122.50

**Re: Loews Miami Beach Hotel Owners' Association, Inc., a Florida  
corporation not for profit**

Dear Sirs:


Enclosed is an original and a copy of the Articles of Incorporation of the above referenced corporation for filing by the Department of State. Also, enclosed is a check for \$122.50 as payment for the following:

1. Filing fee	\$ 35.00
2. Registered agent fee	35.00
3. Certified copy of articles	52.50
	<u>\$122.50</u>

Please return a certified copy of the Articles of Incorporation to me as soon as they have been filed.

Thank you for your assistance in this matter.

Very truly yours,

  
Kolleen O. P. Cobb

Enclosure

One Battery Park Plaza  
MI 962600, D67 York, NY  
10004-1487  
212-817-6000

47, Avenue Georges Mandel  
75116 Paris, France  
(1) (1) 44.05.80.00

1300 I Street, N.W.  
Washington, D.C.  
20005-3106  
202-408-3600

350 South Grand Avenue  
Los Angeles, CA  
90071-3442  
213-613-2800

BROWN SEP 19 1996

ARTICLES OF INCORPORATION  
OF  
LOEWS MIAMI BEACH HOTEL OWNERS' ASSOCIATION, INC.  
a Florida corporation not for profit

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
95 SEP 18 AM 9:52

The undersigned by these articles associate themselves for the purpose of forming a corporation not-for-profit pursuant to the provisions and the laws of the State of Florida, and hereby adopt the following articles of incorporation:

ARTICLE I

NAME

The name of the corporation shall be LOEWS MIAMI BEACH HOTEL OWNERS' ASSOCIATION, INC., a Florida corporation not-for-profit. Hereinafter the corporation shall be referred to as the "Association", with its principal place of business located at 407 Lincoln Road, Suite 6-K, Miami Beach, Florida 33139.

ARTICLE II

PURPOSE

The purpose for which the Association is organized is to provide an entity pursuant to Section 718.111 of Chapter 718, Florida Statutes, as it exists on the date hereof, hereinafter called the "Condominium Act" or the "Act", for the operation of Loews Miami Beach Hotel, a non-residential condominium to be created pursuant to the provisions of the Condominium Act.

ARTICLE III

POWERS

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

A. General. The Association shall have all of the common law and statutory powers of a corporation not-for-profit under the laws of the State of Florida that are not in conflict with the provisions of these Articles, the Declaration, the By-Laws or the Act.

B. Enumeration. The Association shall have all of the powers and duties set forth in the Act, except as limited by these Articles, the By-Laws and the Declaration, 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 and these Articles, as they may be amended from time to time, including, but not limited to, the following:

1. To make and collect assessments and other charges against members as Unit Owners, and to use the proceeds thereof in the exercise of its powers and duties.

2. To buy, own, operate, lease, sell, trade and mortgage both real and personal property.

3. To maintain, repair, replace, reconstruct, add to and operate the Common Elements, and other property acquired or leased by the Association.

4. To purchase insurance upon the Condominium Property and insurance for the protection of the Association, its Officers, Directors and Unit Owners.

5. To make and amend reasonable rules and regulations, consistent with the use restrictions set forth in Article XII of the Declaration, for the maintenance, conservation and use of the Condominium Property and for the health, comfort, safety and welfare of the Unit Owners.

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

7. To contract for the operation, management and maintenance of the Condominium Property and to authorize a management agent 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.

8. To employ personnel to perform the services required for the proper operation of the Condominium.

C. Condominium Property. All funds and the titles 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.

D. Distribution of Common Surplus. The Association shall distribute Common Surplus pursuant to the provisions of Section 8.6 of the Declaration.

E. 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.

#### ARTICLE IV

##### MEMBERS

A. Membership. The members of the Association shall consist of the record Owners of the Units in the Loews Miami Beach Hotel, a Condominium, and after termination

of the Condominium, shall consist of those who are members at the time of such termination, and their successors and assigns.

B. How Membership Acquired. Membership shall be acquired by recording in the Public Records of Dade County, Florida, a deed or other instrument establishing record title to a Unit in Loews Miami Beach Hotel, a Condominium, the Owner designated by such instrument thus becoming a member of the Association, and the membership of the prior Owner being thereby terminated, provided, however, any party who owns more than one (1) Unit shall remain a member of the Association so long as he shall retain title to or a fee ownership interest in a Unit.

C. 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 his Unit for which that share is held.

D. Voting. On all matters upon which the members shall be entitled to vote, the Owner of the Hotel Unit shall be entitled to three (3) votes and the Owner of the Public Unit shall be entitled to one (1) vote, which votes may be exercised or cast in such manner as may be provided in the By-Laws of the Association.

E. Membership Meetings. The By-Laws shall provide for an annual membership meeting, and may provide for regular and special meetings of members other than the annual meeting.

#### ARTICLE V

##### TERM OF EXISTENCE

The Association shall have perpetual existence.

#### ARTICLE VI

##### INCORPORATOR

The name and address of the person signing these Articles of Incorporation is:

William A. Weber, Esq.  
c/o Hughes Hubbard & Reed  
201 Biscayne Blvd., Suite 2500  
Miami, Florida 33131

#### ARTICLE VII

##### OFFICERS

The affairs of the Association shall be administered by a President, a Vice President, a Secretary and a Treasurer, and such Assistant Secretaries and Assistant Treasurers as the Board of Directors may, from time to time, designate. Any person may

hold two (2) offices, excepting that the same person shall not hold the office of President and Vice President and the same person shall not hold the office of President and Secretary. Officers of the Association shall be elected by the Board of Directors following each annual meeting of the members of the Association, and shall serve at the pleasure of the Board of Directors. The names and addresses of the Officers who shall serve until their successors are elected by the Board of Directors in accordance with these Articles or the Bylaws of the Association, are as follows:

PRESIDENT	Jonathan M. Tisch 667 Madison Avenue New York, New York 10021
SENIOR VICE PRESIDENT	Jack S. Adler 667 Madison Avenue New York, New York 10021
VICE PRESIDENT OF PROJECT CONSTRUCTION	Eric Nesse MB Redevelopment, Inc. 407 Lincoln Road Suite 6-K Miami Beach, Florida 33139
VICE PRESIDENT AND SECRETARY	Gary W. Garson 667 Madison Avenue New York, New York 10021
TREASURER	John J. Kenny 667 Madison Avenue New York, New York 10021

#### ARTICLE VIII

##### BOARD OF DIRECTORS

A. Number and Qualification. The affairs of the Association shall be managed by a Board of Directors. The number of persons which shall constitute the entire Board of Directors shall be not less than four (4).

B. Directors. The names and addresses of the members of the initial Board of Directors who shall hold office until their successors are elected and have qualified, or until removed, are as follows:

NAME	ADDRESS
Jack S. Adler	667 Madison Avenue New York, New York 10021

Jonathan M. Tisch

667 Madison Avenue  
New York, New York 10021

Maro Shapiro

667 Madison Avenue  
New York, New York 10021

Jose Garcia-Pedrosa

Miami Beach Redevelopment Agency  
Executive Director  
1700 Convention Center Drive  
Miami Beach, Florida 33139

Subsequent to the conveyance by the Co-Declarants of both Units, the number of Directors who shall constitute the entire Board of Directors shall remain four (4). The Hotel Owner shall then elect three (3) Directors and the Public Unit Owner shall then elect one (1) Director. Hotel Owner and Public Unit Owner acknowledge that for so long as the Public Unit is owned by the Agency, the Director for the Public Unit shall be the Executive Director of the Miami Beach Redevelopment Agency, and if the Public Unit is owned by the City of Miami Beach, the Director for the Public Unit shall be the City Manager for the City of Miami Beach.

C. 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 Association members when such approval is specifically required by these Articles, the By-Laws or the Declaration. In the event of deadlock among the Directors, either Unit Owner may elect, in writing, to submit the dispute to be resolved pursuant to the Dispute Resolution Procedure set forth in Section 19.7 of the Declaration (the "Dispute Resolution Procedure"), and such resolution shall be binding upon the Unit Owners and their Directors, who shall immediately comply with the decision rendered.

D. Election; Removal. Except as otherwise provided in these Articles, 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. Except as otherwise provided in these Articles, Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

## ARTICLE IX

### INDEMNIFICATION

A. Indemnity. The Association shall, and does hereby, indemnify to the fullest extent permitted or authorized by current or future legislation or current or future judicial or administrative decisions (but, in the case of any future legislation or decisions, only to the extent that it permits the Association to provide broader indemnification rights than permitted prior to such legislation or decisions), each person (including the heirs, executors, administrators or the estate of such person) who was or is a party or is threatened to be

made a party, or was or is a witness, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), against any liability (which for purposes of this Article shall include any judgment, settlement, penalty or fine) or cost, charge or expense (including attorneys' fees) asserted against him or incurred by him by reason of the fact that such Indemnified person (1) is or was a Director or Officer of the Association or (2) is or was an employee or agent of the Association as to whom the Association has agreed to grant such indemnity or (3) is or was serving, at the request of the Association, as a director or officer of another corporation, partnership, joint venture, trust or other enterprise (including serving as a fiduciary of any employee benefit plan) or is serving as an employee or agent of such other corporation, partnership, joint venture, trust or other enterprise as to whom the Association has agreed to grant such indemnity. Each Director, Officer, employee or agent of the Association to whom indemnification rights under this Paragraph A of this Article have been granted shall be referred to as an "Indemnified Person."

Notwithstanding the foregoing, except as specified in Paragraph C of this Article, the Association shall not be required to indemnify an Indemnified Person in connection with a Proceeding (or any part thereof) initiated by such Indemnified Person unless such authorization for such Proceeding (or any part thereof) was approved by the Board of Directors of the Association prior to sixty (60) days after receipt of notice thereof from such Indemnified Person stating his intent to initiate such Proceeding and only upon such terms and conditions as the Board of Directors may deem appropriate.

B. Expenses. Costs, charges and expenses (including reasonable attorneys' fees) incurred by an Officer or Director who is an Indemnified Person in defending a Proceeding shall be paid by the Association to the fullest extent permitted or authorized by current or future legislation or current or future judicial or administrative decisions (but, in the case of any such future legislation or decisions only to the extent that it permits the Association to provide broader rights to advance costs, charges and expenses than permitted prior to such legislation or decisions) in advance of the final disposition of such Proceeding, upon receipt of an undertaking by or on behalf of the Indemnified Person to repay all amounts so advanced in the event that it shall ultimately be determined that such person is not entitled to be indemnified by the Association as authorized in this Article and upon such other terms and conditions, in the case of employees and agents as to whom the Association has agreed to grant such indemnity, as the Board of Directors may deem appropriate. The Association may, upon approval of the Indemnified Person which approval shall not be unreasonably withheld, authorize the Association's counsel to represent such person in any Proceeding, whether or not the Association is a party to such Proceeding. Such authorization may be made by the Board of Directors by majority vote, including Directors who are parties to such Proceeding.

C. Advances. Any indemnification or advance under this Article shall be made promptly and in any event within sixty (60) days upon the written request of the Indemnified Person. The right to indemnification or advances as granted by this Article shall be enforceable by the Indemnified Person in any court of competent jurisdiction, if the Association denies such request under this Article, in whole or in part, or if no disposition

thereof is made within sixty (60) days. Such Indemnified Person's costs and expenses incurred in connection with successfully establishing his right to indemnification, in whole or in part, in any such action shall also be indemnified by the Association. It shall be a defense to any such action that the claimant has not met the standard of conduct, if any, required by current or future legislation or by current or future judicial or administrative decisions for indemnification (but, in the case of any such future legislation or decisions, only to the extent that it does not impose a more stringent standard of conduct than permitted prior to such legislation or decisions), but the burden of proving such defense shall be on the Association. Neither the failure of the Association (including its Board of Directors or any committee thereof, its independent legal counsel, and its members) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct, if any, nor the fact that there has been an actual determination by the Association (including its Board of Directors or any committee thereof, its independent legal counsel, and its members) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

D. Miscellaneous. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-laws, agreement, vote of members or disinterested Directors or recommendation of counsel or otherwise, both as to actions in such person's official capacity and as to actions in another capacity while holding such office, and shall continue as to an Indemnified Person who has ceased to be a Director, Officer, employee or agent and shall inure to the benefit of the heirs, executors, administrators and the estate of such person. All rights to indemnification under this Article shall be deemed to be a contract between the Association and each Indemnified Person who serves or served in such capacity at any time while this Article is in effect. Any repeal or modification of this Article or any repeal or modification of relevant provisions of Chapter 617, Florida Statutes, Chapter 607, Florida Statutes, or any other applicable law shall not in any way diminish any rights to indemnification of such Indemnified Person, or the obligation of the Association arising hereunder, for claims relating to matters occurring prior to such repeal or modification.

E. Insurance. The Association may 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 or the applicable provisions of the Florida Business Corporation Act.

F. Amendment. Anything to the contrary herein notwithstanding, the provisions of this Article IX may not be amended without the unanimous vote of the Board of Directors and the voting interests of the Association.



G. Savings Clause. If this Article IX or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Association shall nevertheless indemnify each Indemnified Person as to costs, charges and expenses (including reasonable attorneys' fees), judgments, fines and amounts paid in settlement with respect to any Proceeding, including an action by or in the right of the Association, to the full extent permitted by any applicable portion of this Article that shall not have been invalidated and as permitted by applicable law.

## ARTICLE X

### BY-LAWS

The first By-Laws of the Association in the form attached to the Declaration as Exhibit "D" shall be adopted by the Board of Directors and, thereafter, may be altered, amended or rescinded in the manner provided in the By-Laws.

## ARTICLE XI

### AMENDMENTS

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

A. Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

B. Adoption. A resolution for the adoption of a proposed amendment may be proposed by the Board of Directors of the Association or by one (1) of the members of the Association. A member may propose such an amendment by instrument in writing directed to the President or Secretary. Amendments may be proposed by the Board of Directors by action of a majority of the Board at any meeting thereof. Upon an amendment being proposed as herein provided, the President, or in the event of his refusal or failure to act, the Board of Directors, shall call a meeting of the membership to be held not sooner than fifteen (15) days nor later than sixty (60) days thereafter for the purpose of considering such amendment. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval or disapproval in writing provided such document is delivered to the Secretary at or prior to the meeting. The amendment shall be effective upon the adoption by a majority of the Board of Directors and by not less than three fourths of the voting interests of the Association.

C. Limitation. Notwithstanding the foregoing, no amendment shall (a) alter or amend the rights of the Developer or mortgagees of Units without their consent or (b) make changes in the qualifications of membership or the voting rights or property rights of members without the approval in writing of all members. No amendment shall be made that is in conflict with the Act or the Declaration.

D. Filing and Recording. A copy of each amendment shall be filed with the Department of State, pursuant to the provisions of the applicable Florida Statutes, and a

copy certified by the Secretary of State shall be recorded in the Public Records of Dade County.

ARTICLE XII

DEFINITIONS

Unless herein provided to the contrary, or unless the context otherwise requires, the terms used in these Articles shall have the same definitions and meanings as set forth in the Declaration of Condominium.

ARTICLE XIII

INITIAL REGISTERED OFFICE;  
ADDRESS AND NAME OF REGISTERED-AGENT

The Initial Registered Agent to accept service of process within this state for said corporation shall be William A. Weber, and the Initial Registered Office of the Association shall be located at 201 Biscayne Boulevard, Suite 2500, Miami, Florida 33131.

Having been named to accept service of process for the above stated corporation at the place designated herein, the undersigned hereby accepts to act in this capacity, and agrees to comply with the provision of said Act relative to keeping open said office.

By: \_\_\_\_\_

William A. Weber

IN WITNESS WHEREOF, the Incorporator has affixed his signature hereto on this 17 day of September 1996.

By: \_\_\_\_\_

William A. Weber

STATE OF FLORIDA )

COUNTY OF DADE )

BEFORE ME, the undersigned authority, personally appeared William A. Weber, who after being duly sworn, acknowledged that he executed the foregoing Articles of Incorporation for the purposes expressed therein. He is personally known to me or produced a valid Florida drivers license as identification.

WITNESS my hand and seal in Miami, Dade County, Florida, this 17 day of September, 1996.



Elizabeth Doddridge  
Notary Public, State of Florida at Large

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
96 SEP 18 AM 9:52

STATE OF FLORIDA  
OFFICE OF THE COMPTROLLER  
APPLICABLE FOR REFUND

N96000004853

Section 215.26, Florida Statutes, states in part: "Applications for refunds as provided in this section shall be filed with the Comptroller, except as otherwise provided herein, within 3 years after the right to such refund shall have accrued else such right shall be barred." Three years is generally interpreted as meaning three years from the date of payment into the State treasury. The Comptroller has delegated the authority to accept applications for refund to the unit of State government which initially collected the money.

Pursuant to the provisions of Rule 3A-44.020, Florida Administrative Code, and Section 215.26, Florida Statutes, or Section \_\_\_\_\_, Florida Statutes, I hereby apply for a refund of moneys I paid into the State treasury, which are subject to refund. The following information is submitted to substantiate the claim.

Name: LOENS MIAMI BEACH HOTEL EIN or SSH: \_\_\_\_\_  
 OWNER'S ASSOCIATION, INC.  
 Address: 655 MADISON AVE. % TAX DEPT. 5TH FL.  
NEW YORK N.Y. 10021-8043

Amount: \$61.25 Date Paid \_\_\_\_\_

Reason for claim: Report already filed N96000004853  
SP2 5/23/97

Certified true and correct this 20TH day of JUNE, 19 97.

Signature Denise A. Desmond  
 \_\_\_\_\_  
 DENISE A. DESMOND ASST. TREASURER

\* Must be completed if authority is other than Section 215.26, Florida Statutes.

For Agency Use Only	
Agency recommends approval of above claim and submits the following information to substantiate the claim:	
Amount of recommended refund \$ <u>61.25</u>	
The amount requested above was originally deposited into the State Treasury as a part of the funds deposited on State Treasurer's Receipt No. <u>95A431035</u> dated <u>05-01-97</u>	
Name of Account _____	
45202130001453000000000010000	
Statutory Authority for Collection <u>617</u>	
It is requested that payment be made from the following account:	
NAME OF ACCOUNT _____	
452021300014530000000022002000	
Certified true and correct this _____ day of _____, 19 _____	
Department of State, Division of Corporations (Agency)	_____ (Authorized Signature and Title)