

CCRS
103 N. MERIDIAN STREET, LOWER LEVEL
TALLAHASSEE, FL 32301
222-1173

FILING COVER SHEET
ACCT. #FCA-14

N99000007129

CONTACT: CINDY HICKS

DATE: 6-1-00

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*****43.75 *****43.75

REF. #: 0150. 12001

CORP. NAME: Omni Condominium Association
Inc

- | | | |
|--|---|--|
| <input type="checkbox"/> ARTICLES OF INCORPORATION | <input checked="" type="checkbox"/> ARTICLES OF AMENDMENT | <input type="checkbox"/> ARTICLES OF DISSOLUTION |
| <input type="checkbox"/> ANNUAL REPORT | <input type="checkbox"/> TRADEMARK/SERVICE MARK | <input type="checkbox"/> FICTITIOUS NAME |
| <input type="checkbox"/> FOREIGN QUALIFICATION | <input type="checkbox"/> LIMITED PARTNERSHIP | <input type="checkbox"/> LIMITED LIABILITY |
| <input type="checkbox"/> REINSTATEMENT | <input type="checkbox"/> MERGER | <input type="checkbox"/> WITHDRAWAL |
| <input type="checkbox"/> CERTIFICATE OF CANCELLATION | <input type="checkbox"/> UCC-1 | <input type="checkbox"/> UCC-3 |
| <input type="checkbox"/> OTHER: _____ | | |

STATE FEES PREPAID WITH CHECK# _____ FOR \$ 43.75

AUTHORIZATION FOR ACCOUNT IF TO BE DEBITED:

COST LIMIT: \$ _____

PLEASE RETURN:

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> CERTIFIED COPY | <input type="checkbox"/> CERTIFICATE OF GOOD STANDING | <input checked="" type="checkbox"/> PLAIN STAMPED COPY |
| <input type="checkbox"/> CERTIFICATE OF STATUS | | |

Examiner's Initials

E. COULLETTE JUN 01 2000

RECEIVED
00 JUN - 1 PM 12:34
FILED
00 JUN - 1 PM 12:45
DEPARTMENT OF STATE
DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

CERTIFICATE
OF
THE MEMBERS
OF
OMNI CONDOMINIUM ASSOCIATION, INC.

FILED
00 JUN - 1 PM 12:46
SECRETARY OF STATE
TALLAHASSEE, FLORIDA


Pursuant to the provisions of the Florida Not-For-Profit Corporation Act, the undersigned, being all of the members of OMNI CONDOMINIUM ASSOCIATION, INC. (the "Association") hereby certify as follows:

(a) At a meeting of the members duly called and held, the undersigned, as the sole member of the Association, hereby voted to amend and restate the Articles of Incorporation of the Association in their entirety, to read in the form attached hereto as Exhibit "A".

**CP MIAMI HOSPITALITY, L.P., a Delaware
limited partnership**

By: CP Miami Hotel Managers, L.P., a
Delaware limited partnership, its sole
general partner

By: CP Miami Hotel Operating
Corporation, a Delaware
corporation, its sole general
partner

By: 
Name: Rami Alghai
Title: PRESIDENT

(Corporate Seal)

Exhibit "A"

**AMENDED AND RESTATED ARTICLES OF INCORPORATION
FOR
OMNI 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 Amended and Restated Articles of Incorporation:

ARTICLE 1
NAME

The name of the corporation shall be **OMNI CONDOMINIUM 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".

ARTICLE 2
OFFICE

The principal office and mailing address of the Association shall be at 3250 Mary Street, Suite 305, Coconut Grove, FL 33133, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at its principal office or at such other place as may be permitted by the Act.

ARTICLE 3
PURPOSE

The purpose for which the Association is organized is to provide an entity pursuant to the Florida Condominium Act as it exists on the date hereof (the "Act") for the operation of that certain condominium located in Miami-Dade County, Florida, and known as **OMNI CONDOMINIUM** (the "Condominium").

ARTICLE 4
DEFINITIONS

The terms used in these Articles shall have the same definitions and meanings as those set forth in the Amended and Restated Declaration of Omni Condominium (the "Declaration") to be recorded in the Public Records of Miami-Dade County, Florida, as amended from time to time, unless herein provided to the contrary, or unless the context otherwise requires.

ARTICLE 5
POWERS

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

- 5.1 **General.** The Association shall have all of the common-law and statutory powers of a corporation not for profit under the Laws of Florida, except as expressly limited or restricted by the terms of these Articles, the Declaration, the By-Laws or the Act.
- 5.2 **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 (to the extent that they are not in conflict with the Act), 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, as they may be amended from time to time, including, but not limited to, the following:
 - (a) In accordance with the provisions of the Declaration, to make and collect Assessments and other charges against Unit Owners (whether or not such sums are due and payable to the Association), and to use the proceeds thereof in the exercise of its powers and duties.
 - (b) To buy, accept, own, operate, lease, sell, trade and mortgage both real and personal property in accordance with the provisions of the Declaration.
 - (c) To maintain, repair, replace, reconstruct, add to and operate the Condominium Property and/or Association Property, and other property acquired or leased by the Association in accordance with the Declaration.

- (d) To purchase insurance upon the Condominium Property and Association Property and insurance for the protection of the Association, its officers, directors and Unit Owners in accordance with the Declaration.
 - (e) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Condominium Property and Association Property and for the health, comfort, safety and welfare of the Unit Owners in accordance with the Declaration.
 - (f) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the By-Laws, and the rules and regulations for the use of the Condominium Property and Association Property.
- 5.3 Association Property. All funds and the title to all properties acquired by the Association and their proceeds shall be held for the benefit and use of the Unit Owners in accordance with the provisions of the Declaration, these Articles and the By-Laws.
- 5.4 Distribution of Income; Dissolution. The Association shall not pay a dividend to its Members and shall make no distribution of income to its Members, directors or officers, and upon dissolution, all assets of the Association shall be transferred only to another non-profit corporation or a public agency or as otherwise authorized by the Florida Not For Profit Corporation Act (Chapter 617, Florida Statutes).
- 5.5 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, provided that in the event of conflict, the provisions of the Act shall control over those of the Declaration and By-Laws.

ARTICLE 6 **MEMBERS**

- 6.1 Membership. The members of the Association (the "Members") shall consist of the record title owners, from time to time, of each of the Mall Units and of the Hotel Unit, and after termination of the Condominium, shall also consist of those who were Members at the time of such termination, and their successors and assigns.
- 6.2 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 the Unit for which that share is held.
- 6.3 Voting. On all matters upon which Members shall be entitled to vote, each Mall Unit shall entitle the Owner thereof to one (1) vote with respect to each such Unit and, collectively, the Mall Parcel Owner shall be entitled to cast a total of three (3) votes and the owner of the Hotel Unit shall be entitled to three (3) votes. All votes shall be exercised or cast in the manner provided by the Declaration and By-Laws.
- 6.4 Meetings. The By-Laws shall provide for an annual meeting of Members, and may make provision for regular and special meetings of Members other than the annual meeting.

ARTICLE 7 **TERM OF EXISTENCE**

The Association shall have perpetual existence.

ARTICLE 8 **INCORPORATOR**

The name and address of the Incorporator of this Corporation is:

<u>NAME</u>	<u>ADDRESS</u>
Sherwood Weiser	3250 Mary Street Coconut Grove, Florida 33133

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 at its first meeting following the annual meeting of the Members of the Association and shall serve at the pleasure of the Board of Directors. 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. If the President is affiliated with any of the Mall Parcel Owners, then the Vice President, Secretary and Treasurer shall be affiliated with the Hotel Unit Owner and if the President is affiliated with the Hotel Unit Owner, then the Vice President, Secretary and Treasurer shall be affiliated with the Mall Parcel Owners. The By-Laws may provide for the removal from office of officers, for filling vacancies and for the duties and qualifications 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:

<u>OFFICE</u>	<u>NAME</u>	<u>ADDRESS</u>
President	Karim Alibhai	3250 Mary Street Coconut Grove, Florida 33133
Vice-President	Sherwood Weiser	3250 Mary Street Coconut Grove, Florida 33133
Secretary/Treasurer	Warren Weiser	2665 South Bayshore Drive Suite 1002 Coconut Grove, FL 33133

ARTICLE 10
DIRECTORS

- 10.1 **Number and Qualification.** The property, business and affairs of the Association shall be managed by a board consisting of six (6) directors as provided by the By-Laws. Directors need not be Members of the Association.
- 10.2 **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 Unit Owners when such approval is specifically required. In the event of a deadlock between the Directors, any Member may elect, in writing, to submit the dispute to be resolved pursuant to the Dispute Resolution Plan set forth in Section 16.2 of the Declaration and such resolution shall be binding upon the Members and the Directors, who shall immediately comply with the decision rendered.
- 10.3 **Election; Removal.** The Owner of each Mall Unit shall be entitled to appoint one (1) member to the Board so that the Mall Parcel Owners shall collectively be entitled to appoint three (3) Directors, and similarly, the Owner of the Hotel Unit shall be entitled to appoint three (3) members to the Board. Directors may be removed only by the Unit Owner that appointed the Director and vacancies on the Board of Directors shall be filled by the appointment of another Director by the Unit Owner who originally appointed the Director being replaced.

- 10.4 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 have taken office, as provided in the By-Laws, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Sherwood Weiser	3250 Mary Street Coconut Grove, FL 33133
Karim Alibhai	3250 Mary Street Coconut Grove, Florida 33133
Warren Weiser	2665 South Bayshore Drive Suite 1002 Coconut Grove, FL 33133
Andrew Penson	c/o Argent Ventures LLC 551 Fifth Avenue New York, New York 10176
Edward Penson	c/o Argent Ventures LLC 551 Fifth Avenue New York, New York 10176
Mark Teitelbaum	c/o Argent Ventures LLC 551 Fifth Avenue New York, New York 10176

- 10.5 Standards. A Director shall discharge his 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 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 competent in the manners presented; legal counsel, public accountants or other persons as to matters the Director reasonably believes are within the persons' 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 office in compliance with the foregoing standards.

ARTICLE 11 INDEMNIFICATION

- 11.1 Indemnitees. The Association shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the Association) by reason of the fact that he is or was a Director, officer, employee or agent (each, an "Indemnitee") of the Association, against liability incurred in connection with such proceeding, including any appeal thereof, if he acted in good faith and in a manner he 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 reasonable cause to believe his conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or 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 interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.
- 11.2 Indemnification. The Association shall indemnify any person, who was or is a party to any proceeding by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a Director, officer, employee, or agent of the Association against expenses and amounts paid in settlement not exceeding, in the judgment of the Board of Directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement

of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

- 11.3 Indemnification for 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 proceeding referred to in subsection 11.1 or 11.2, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses actually and reasonably incurred by him in connection therewith.
- 11.4 Determination of Applicability. Any indemnification under subsection 11.1 or subsection 11.2, unless pursuant to a determination by a court, shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the Director, officer, employee, or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in subsection 11.1 or subsection 11.2. Such determination shall be made: by a unanimous vote of the Board of Directors, excluding any Directors who were parties to such proceeding or by a unanimous vote of the Members of the Association (excluding any Members who were parties to such proceeding).
- 11.5 Determination Regarding Expenses. Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible.
- 11.6 Advancing Expenses. Expenses incurred by an officer or Director in defending a civil or criminal proceeding may be paid by the Association in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such Director or officer to repay such amount if he is ultimately found not to be entitled to indemnification by the Association pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the Board of Directors deem appropriate.
- 11.7 Exclusivity; Exclusions. The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and the Association may make any other or further indemnification or advancement of expenses of any of its Directors, officers, employees, or agents, under any bylaw, agreement, vote of disinterested shareholders or disinterested Directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any Director, officer, employee, or agent if a judgment or other final adjudication establishes that his actions, or omissions to act, were material to the cause of action so adjudicated and constitute:
- (a) A violation of the criminal law, unless the Director, officer, employee, or agent had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful;
 - (b) A transaction from which the Director, officer, employee, or agent derived an improper personal benefit; or
 - (c) Willful misconduct or a conscious disregard for the best interests of the Association.
- 11.8 Continuing Effect. Indemnification and advancement of expenses as provided in this section shall continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to be a Director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless otherwise provided when authorized or ratified.
- 11.9 Application to Court. Notwithstanding the failure of the Association to provide indemnification, and despite any contrary determination of the Board or of the Members in the specific case, a Director, officer, employee, or agent of the Association who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that:

- (a) The Director, officer, employee, or agent is entitled to mandatory indemnification under subsection 11.3, in which case the court shall also order the Association to pay the Director reasonable expenses incurred in obtaining court-ordered indemnification or advancement of expenses;
- (b) The Director, officer, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the Association of its power pursuant to subsection 11.7; or
- (c) The Director, officer, employee, or agent is fairly and reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether such person met the standard of conduct set forth in subsection 11.1, subsection 11.2, or subsection 11.7, unless (a) 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 or acted in a manner he should have reasonably believed to be not in, or 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 (b) such court further specifically determines that indemnification should be denied. The termination of any proceeding 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 or did act in a manner which he should have reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

11.10 Definitions. For purposes of this Article 11, the term "expenses" shall be deemed to include attorneys' fees, including those for any appeals; the term "liability" shall be deemed to include obligations to pay a judgment, settlement, penalty, fine, and expenses actually and reasonably incurred with respect to a proceeding; the term "proceeding" shall be deemed to include any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal; and the term "agent" shall be deemed to include a volunteer; the term "serving at the request of the Association" shall be deemed to include any service as a Director, officer, employee or agent of the Association that imposes duties on such persons.

11.11 Amendment. Anything to the contrary herein notwithstanding, no amendment to the provisions of this Article 11 shall be applicable as to any Member eligible for indemnification hereunder who has not given his prior written consent to such amendment.

ARTICLE 12 **BY-LAWS**

The first By-Laws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded in the manner provided in the By-Laws and the Declaration.

ARTICLE 13 **AMENDMENTS**

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

- 13.1 Notice. Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in Chapter 617, Florida Statutes. Such notice shall contain the proposed amendment or a summary of the changes to be affected thereby.
- 13.2 Adoption. Amendments shall be proposed and adopted in the manner provided in Chapter 617, Florida Statutes and in the Act (the latter to control over the former to the extent provided for in the Act).
- 13.3 Limitation. No amendment shall make any changes in the qualifications for membership, nor in the voting rights or property rights of Members, nor any changes in Sections 5.3, 5.4 or 5.5, nor in any manner create an adverse affect on any Member (unless consented to by such Member and if applicable the Mortgagees of such Member) without the approval in writing of all Members and the joinder of all record owners of mortgages upon Units. No amendment shall be made that is in conflict with the Act, the Declaration or the By-Laws. No amendment to this paragraph 13.3 or in violation of this paragraph 13.3 shall be effective.

- 13.4 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 Miami-Dade County, Florida with an identification on the first page thereof of the book and page of said public records where the Declaration was recorded which contains, as an exhibit, the initial recording of these Articles.

ARTICLE 14
INITIAL REGISTERED OFFICE:
ADDRESS AND NAME OF REGISTERED AGENT

The initial registered office of this corporation shall be at 3250 Mary Street, Coconut Grove, FL 33133 with the privilege of having its office and branch offices at other places within or without the State of Florida. The initial registered agent at that address shall be Sherwood Weiser.