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## BASIC AMENDMENT

ISLAND TIDES, INC.

Certificate of Status	0
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DIVISION OF CORPORATIONS

04 FEB 17 PM 12:46  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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T BROWN FEB 17 2004

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
ISLAND TIDES, INC.**

Original Articles of Incorporation  
filed with the Florida Secretary of State  
on March 22, 1999

FILED  
04 FEB 17 PM 12:46  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**FIRST:** The name of the corporation is ISLAND TIDES, INC. (the "Corporation").

**SECOND:** The address of the Corporation's registered office in the State of Florida is 1201 Hays Street, Tallahassee, Florida 32301. The name of its registered agent at such address is Corporate Services Company.

**THIRD:** The purpose of the Corporation shall be limited to owning, operating, managing and leasing the property commonly known as The Tides Hotel at 1220 Ocean Drive, Miami Beach, Florida (the "Property") and activities incidental thereto. The Corporation shall be prohibited from incurring indebtedness of any kind except for mortgage loan and other indebtedness (the "Indebtedness") incurred in favor of Lehman Brothers Holdings Inc., d/b/a Lehman Capital, a division of Lehman Brothers Holdings Inc. and its successors and assigns with respect to the Indebtedness ("Lender") and trade payables incurred in the ordinary course of business.

**FOURTH:** The total number of shares which the Corporation shall have authority to issue is One Hundred (100) shares of Common Stock, par value \$0.01 per share.

**FIFTH:** The address of the principal office and mailing address of the Corporation is 1220 Ocean Drive, Miami Beach, Florida 33139.

**SIXTH:** The Board of Directors is expressly authorized to adopt, amend, or repeal the By-Laws of the Corporation upon the conditions set forth in the By-Laws.

**SEVENTH:** The Board of Directors of the Corporation shall consist of at least one director, with the exact number to be fixed from time to time in the manner provided in the Corporation's Bylaws. The number of directors constituting the initial Board of Directors is one and the name and address of the member of the initial Board of Directors who will serve as the Corporation's director until successors are duly elected and qualified is:

Susan (Wendy) Hart  
1330 Ocean Drive  
4<sup>th</sup> Floor  
Miami Beach, Florida 33139

Lawrence Mestel  
825 Eighth Avenue  
24<sup>th</sup> Floor  
New York, NY 10019

**EIGHTH:** Elections of directors need not be by written ballot unless the By-Laws of the Corporation shall otherwise provide.

**NINTH:** A director or officer of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided however, that the foregoing shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 607.0831 of the Florida Business Corporation Act, or (iv) for any transaction from which the director of the Corporation derived an improper financial benefit. If the Florida Business Corporation Act is hereafter amended to permit further elimination or limitation of the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Florida Business Corporation Act as so amended. Any repeal or modification of this Article EIGHTH by the stockholders of the Corporation or otherwise shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

**TENTH:** The following provisions regulate the internal affairs of the Corporation:

1. A unanimous vote of the Board of Directors is required to take any of the following actions:
  - (a) causing the Corporation to become insolvent;
  - (b) commencing any case, proceeding or other action on behalf of the Corporation under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors;
  - (c) instituting proceedings to have the Corporation adjudicated as bankrupt or insolvent;
  - (d) consenting to the institution of bankruptcy or insolvency proceedings against the Corporation;
  - (e) filing a petition or consent to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief on behalf of the Corporation of its debts under any federal or state law relating to bankruptcy;
  - (f) seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Corporation or a substantial portion of the properties of the Corporation;
  - (g) making any assignment for the benefit of the Corporation's creditors; or
  - (h) taking any action or causing the Corporation to take any action in furtherance of any of the foregoing;
2. For so long as the Indebtedness is outstanding, the Corporation shall not:
  - (a) amend the Certificate of Incorporation;
  - (b) engage in any business activity other than as set forth in Article THIRD;

- (c) dissolve, liquidate, consolidate, merge, or sell all or substantially all of the Corporation's assets; or
- (d) transfer its interest or a portion thereof in the Property Owner, except as expressly permitted under the loan documents executed in connection with the Indebtedness.

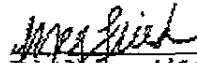
3. The Corporation shall to:

- (a) not commingle its assets with those of any other entity and hold its assets in its own name;
- (b) conduct its own business in its own name;
- (c) maintain bank accounts, books, records, accounts and financial statements separate from any other entity;
- (d) maintain its books, records, resolutions and agreements as official records and separate from any other entity;
- (e) pay its own liabilities out of its own funds;
- (f) maintain adequate capital in light of contemplated business operations;
- (g) observe all corporate or other organizational formalities;
- (h) maintain an arm's length relationship with its affiliates;
- (i) pay the salaries of its own employees and maintain a sufficient number of employees in light of contemplated business operations;
- (j) not guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of others;
- (k) not acquire obligations or securities of affiliates or shareholders;
- (l) not make loans to any other person or entity;
- (m) allocate fairly and reasonably any overhead for shared office space;
- (n) use separate stationery, invoices, and checks;
- (o) not pledge its assets for the benefit of any other entity;
- (p) hold itself out as a separate entity and correct any known misunderstanding regarding its separate identity; and
- (q) not identify itself or any of its affiliates as a division or part of the other.

4. The Board of Directors is to consider the interests of the Corporation's creditors in connection with all corporate actions.

**ELEVENTH:** Any and all Corporation obligations to indemnify its directors and officers shall not constitute a claim against the Corporation, as long as the Loan is outstanding.

IN WITNESS WHEREOF, I have hereunto set my hand this 11<sup>th</sup> the day of February, 2004 and I affirm that the foregoing certificate is my act and deed and that the facts stated therein are true.

  
 Print Name: M. Friedman  
 Title: Secretary/Treasurer

**ACCEPTANCE OF APPOINTMENT OF REGISTERED AGENT**

The undersigned, having been named the Registered Agent of ISLAND TIDES, INC. hereby accepts such designation and is familiar with, and accepts, the obligations of such position, as provided in Florida Statute §607.0505.

CORPORATION SERVICE COMPANY

 Jeanine Reynolds  
 as its agent  
 Agent for the Registered Agent

Dated: February 12<sup>th</sup>, 2004

**CERTIFICATE  
REGARDING  
AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
ISLAND TIDES, INC.**

ISLAND TIDES, INC., a Florida corporation (the "Corporation"), hereby certifies, pursuant to and in accordance with Section 607.1007 of the Florida Business Corporation Act (the "Act") for the purpose of filing its Amended and Restated Articles of Incorporation with the Department of State of the State of Florida, that:

1. The name of the Corporation is ISLAND TIDES, INC.
2. The Corporation's Amended and Restated Articles of Incorporation attached hereto (the "Restated Articles") contain certain amendments to the Corporation's Articles of Incorporation.
3. The Restated Articles contain certain amendments to the Corporation's Articles of Incorporation which require shareholder approval, and the Restated Articles were adopted and approved on February 11, 2004 by the Corporation's shareholders pursuant to a written consent, the number of votes cast being sufficient for approval, effective as of February 11, 2004, in the manner prescribed by 607.1004 of the Act.

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of February 11, 2004.

ISLAND TIDES, INC.

By: *[Signature]*  
Name: *Jeff Friedman*  
Title: *Secretary/Treasurer*