

LU 30000 38404

(Requestor's Name)

(Address)

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PICK-UP WAIT MAIL

(Business Entity Name)

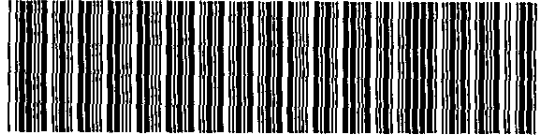
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04 DEC -6 PM 4:18
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

04 DEC -6 PM 3:33
STATE OF FLORIDA
TALLAHASSEE, FLORIDA
FILED

CORPDIRECT AGENTS, INC. (formerly CCRS)
103 N. MERIDIAN STREET, LOWER LEVEL
TALLAHASSEE, FL 32301
222-1173

FILING COVER SHEET
ACCT. #FCA-14

CONTACT: TRICIA TADLOCK

DATE: 12-06-04

REF. #: 0150.32504

CORP. NAME: 900 BISCAYNE, LLC

04 DEC -6 PM 3:33
FILED
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

- | | | |
|--|---|--|
| <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"/> OTHER: | | |

STATE FEES PREPAID WITH CHECK# 510557 FOR \$ 55.00.

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 type="checkbox"/> PLAIN STAMPED COPY |
| <input type="checkbox"/> CERTIFICATE OF STATUS | | |

Examiner's Initials



FLORIDA DEPARTMENT OF STATE

Glenda E. Hood
Secretary of State

December 7, 2004

CORPDIRECT AGENTS

TALLAHASSEE, FL

SUBJECT: 900 BISCAYNE, LLC
Ref. Number: L03000038404

We have received your document for 900 BISCAYNE, LLC and your check(s) totaling \$55.00. However, the enclosed document has not been filed and is being returned for the following correction(s):

Please note that we have RETAINED your \$55.00 payment.

The AMENDED AND RESTATES ARTICLES must contain a statement that the document is "being filed in accord with 608.411, Florida Statutes."

Also, the PRINCIPAL ADDRESS and MAILING ADDRESS of the limited liability company must be listed.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6914.

Buck Kohr
Document Specialist

Letter Number: 904A00068316

FIRST AMENDED AND RESTATED ARTICLES OF ORGANIZATION

OF

900 BISCAYNE, LLC

900 BISCAYNE, LLC, a limited liability company was organized on October 8, 2003 with the Secretary of the State of Florida and does hereby amend and restate its Articles of Organization in its entirety in accordance with 608.411, Florida Statutes to read as follows:

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04-DEC-6 PM 3:33
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLE I – Name

The name of the limited liability company (the “Limited Liability Company”) shall be **900 Biscayne, LLC**.

ARTICLE II – Principal Address

The mailing address and street address of the principal office of the Limited Liability Company is 1200 Brickell Avenue, Ste. 1840, Miami, FL 33131.

ARTICLE III – Purpose

Notwithstanding any provision hereof or of the Operating Agreement of the Limited Liability Company or any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the nature of the business and of the purpose to be conducted and promoted by the Limited Liability Company, is to engage solely in the following activities:

1. To develop, operate and improve that certain parcel of real property located thereon, commonly known as 900 Biscayne Boulevard, Miami, Florida (the “Property”).
2. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge, develop, construct improvements on and otherwise deal with the Property.
3. To exercise all powers enumerated in the Florida Limited Liability Company Act necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

ARTICLE IV – Certain Prohibited Activities

Notwithstanding any provision hereof or of the Operating Agreement of the Limited Liability Company or any other document governing the formation, management or operation of the Limited Liability Company to the contrary, the Limited Liability Company shall only incur indebtedness in an amount necessary to acquire, operate and maintain the

Property. For so long as any mortgage lien exists on the Property in favor of the Lender, the Limited Liability Company shall not incur, assume, or guaranty any other indebtedness other than subordinate debt from the Members necessary for completion of the project to be built on the Property. The Limited Liability Company shall not consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Limited Liability Company) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Limited Liability Company substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article III and in Article V, and (c) shall expressly assume the due and punctual performance of the Limited Liability Company's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this Limited Liability Company and be continuing. For so long as a mortgage lien exists on the Property in favor of Lender, the Limited Liability Company will not voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of all of the members of the Limited Liability Company. For so long as a mortgage lien exists on the Property in favor of Lender, (i) no amendment to these articles of organization may be made and (ii) the Limited Liability Company shall not be dissolved, liquidated or terminated without first obtaining approval of the mortgagee holding a first mortgage lien on the Property.

ARTICLE V – Indemnification

Notwithstanding any provision hereof or of the Operating Agreement of the Limited Liability Company or any other document governing the formation, management or operation of the Limited Liability Company, or any other agreement, to the contrary, any indemnification obligation of the Limited Liability Company shall be fully subordinated to any obligations respecting the Property and shall not constitute a claim against the Limited Liability Company in the event that cash flow is insufficient to pay such obligations.

ARTICLE VI – Separateness Covenants

Notwithstanding any provision hereof or of the Operating Agreement of the Limited Liability Company or any other document governing the formation, management or operation of the Limited Liability Company to the contrary, for so long as any mortgage lien exists on the Property in favor of the Lender, in order to preserve and ensure its separate and distinct identity, in addition to the other provisions set forth in these Articles of Organization, the Limited Liability Company shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from that of any of its affiliates and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate records and books of account from those of any affiliate.
3. It shall not commingle assets with those of any affiliate.
4. It shall conduct its own business in its own name.
5. It shall maintain financial statements separate from any affiliate.
6. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of any affiliate.
7. It shall maintain an arm's length relationship with any affiliate.
8. It shall maintain adequate capital in light of its contemplated business operations.
9. It shall not guarantee or become obligated for the debts of any other entity, including any affiliate, or hold out its credit as being available to satisfy the obligations of others.
10. It shall not acquire obligations or securities of its partners, members or shareholders.
11. It shall use stationery, invoices and checks separate from any affiliate.
12. It shall not pledge its assets for the benefit of any other entity, including any affiliate or make any loans or advances to any other person.
13. It shall hold itself out as an entity separate from any affiliate.
14. It shall correct any known misunderstanding regarding its separate identity.

ARTICLE VII - Managers and Independent Manager.

The Limited Liability Company shall be managed by one manager appointed by its members pursuant to the Operating Agreement of the Limited Liability Company. Notwithstanding any other provision hereof, or of the Limited Liability Company's Operating Agreement, or any other agreement to the contrary, the member(s) of the Limited Liability Company shall immediately cause at least two (2) persons who are "Independent" (as defined elsewhere in these Articles of Organization) to be appointed as additional managers of the Limited Liability Company ("Independent Managers") to serve with the other manager to vote on the following events: (i) to liquidate or dissolve the Company; (ii)

to institute proceedings to be adjudicated bankrupt or insolvent; (iii) to consent to the institution of bankruptcy or insolvency proceedings against it; or (iv) to approve of any merger, consolidation, conversion, or other reorganization of the Company. While such events continue, all Limited Liability Company management actions shall require the written consent of all Independent Managers then serving.

ARTICLE VIII – Dissolution

Notwithstanding any provision hereof or of the Operating Agreement of the Limited Liability Company or any other document governing the formation, management or operation of the Limited Liability Company to the contrary, to the extent permissible under applicable federal and state tax law, and while a mortgage lien exists on the Property in favor of the Lender the vote of a majority-in-interest of the remaining members is sufficient to continue the life of the Limited Liability Company. If such vote is not obtained, for so long as a mortgage lien exists on the Property in favor of the Lender the Limited Liability Company shall not liquidate the Property without first obtaining approval of the Lender. The Lender may continue to exercise all of its rights under the Note and other Loan documents (including existing security agreements or mortgages) until the Loan has been paid in full or otherwise completely discharged.

ARTICLE IX – Voting

Notwithstanding any provision hereof or the Limited Liability Company's Operating Agreement, or of any other document governing the formation, management or operation of the Limited Liability Company to the contrary, when acting on matters subject to the vote of the members, notwithstanding that the Limited Liability Company is not then insolvent, all of the members shall take into account the interest of the Limited Liability Company's creditors, as well as those of the members.

ARTICLE X – Definitions

For purpose of this Article VIII, the following terms shall have the following meanings:

"Affiliate" means any person controlling or controlled by or under common control with the Limited Liability Company including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any partner or employee of the Limited Liability Company, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this limited liability company, or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Constituent Entity" shall mean, with respect to any entity, (i) any manager of such entity, (ii) any general partner of the entity, and (iii) any non-general partner of the entity which owns (or is owned by any person or entity owning, holding or controlling, directly or indirectly) the right to receive 50% or more of the income, distributable funds or losses of the entity; (y) any person or entity which controls the entity ("Controlling Entity"); and (z) any entity which is a "Constituent Entity" with respect to an entity which is a "Constituent Entity" of the subject entity. For all purposes of this definition unless expressly noted, "control" and "controlled by" shall have the meanings assigned to them in Rule 405 under the Securities Act of 1933, as amended. For the purposes of clause (z) of the definition of Constituent Entity, if entity "B" is a Constituent Entity of entity "A", then any Constituent Entity of "B" shall be deemed to be a Constituent Entity of any entity of which "A" is a Constituent Entity.

"Independent" means a natural person who has not been, and during the continuation of his or her services as manager or director ("Fiduciary Representative") of Company or Company's Controlling Entity, (i) except in the capacity as the Fiduciary Representative of Company or Company's Controlling Entity, is not an employee, officer, director, shareholder, partner, manager, member, counsel, advisor, accountant or agent of Company, any Constituent Entity of Company, or any Affiliate of Company or of any Constituent Entity of Company; (ii) is not a present or former customer or supplier of Company, any Constituent Entity of Company or any Affiliate of Company or of any Constituent Entity of Company, or other person or entity who derives or is entitled to derive any of its profits or revenues or any payments (other than any fee paid to such person as compensation for such person to serve as Fiduciary Representative) from any Company, any Constituent Entity of Company, or any Affiliate of Company or of any Constituent Entity of Company; (iii) is not (and is not affiliated with an entity that is) a present or former accountant, advisor, attorney, consultant or counsel to Company, any Constituent Entity of Company, or any Affiliate of Company or of any Constituent Entity of Company; (iv) is not a spouse, parent, child, grandchild or sibling of, or otherwise related to (by blood or by law), any of (i), (ii) or (iii) above; and (v) is not affiliated with a person or entity of which Company, any Constituent Entity of Company, or any Affiliate of Company or of any Constituent Entity of Company is a present or former customer or supplier; provided, however, that an entity that provides a Fiduciary Representative as a service for a fee is not prohibited under this paragraph from providing one or more Fiduciary Representatives to Company, any Constituent Entity of Company, or any Affiliate of Company or of any Constituent Entity of Company.

"Lender" means Hypo Real Estate Capital Corporation or its successors or assigns.

"Loan" means a first priority mortgage loan made by Lender to the Company.

"Note" means the certain promissory note, together with any and all renewals, modifications, consolidations and extensions thereof evidencing the principal balance of a Loan.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof

ARTICLE IX- Registered Agent and Office

The address of the Company's registered office in the State of Florida is 1200 Brickell Avenue, Suite 1840, Miami-Dade County, Miami, Florida 33131. The name of its Registered Agent at such address is Raimundo Onetto.

IN WITNESS WHEREOF, the undersigned has executed this Amended and Restated Articles of Organization for the Company named above this 2nd day of December, 2004.



Pedro Martin, Authorized Person