

NOV - 23 '05 (MON) 17:49

BILZIN SUMBERG

P. 001/008

Division of Corporations

Page 1 of 1

Florida Department of State
Division of Corporations
Public Access System

*Leslie Cruz
24055*

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H05000273372 3)))

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To:
Division of Corporations
Fax Number : (850) 205-0383

From:
Account Name : BILZIN, SUMBERG BAENA PRICE & AXELROD LLP
Account Number : 075350000132
Phone : (305) 374-7580
Fax Number : (305) 350-2446

RECEIVED
05 NOV 29 AM 7:52
DIVISION OF CORPORATION

FILED
2005 NOV 29 AM 10:55
CORPORATIONS
TALLAHASSEE, FLORIDA

LIMITED LIABILITY AMENDMENT

SWERDLOW HOLLY HILL I GP, LLC

Certificate of Status	1
Certified Copy	1
Page Count	07
Estimated Charge	\$60.00

Electronic Filing Menu

Corporate Filing

Public Access Help

↓ 05:01 NOV 30 2005

NOV. -28' 05 (MON) 17:49

BILZIN SUMBERG

P. 002/008

H05000273372 3

FILED
2005 NOV 29 AM 10:55
TALLAHASSEE, FLORIDA

**AMENDED AND RESTATED
ARTICLES OF ORGANIZATION
OF
SWERDLOW HOLLY HILL I GP, LLC**

The undersigned, Bonefish Partners, LLC, a Delaware limited liability company (the "Member"), being the sole member of SWERDLOW HOLLY HILL I GP, LLC, a Florida limited liability company (the "Company"), hereby states as follows on behalf of the Company:

1. The Company was organized as "SWERDLOW HOLLY HILL I GP, LLC" on March 15, 2005, the date on which the Articles of Organization were filed with the Secretary of State of the State of Florida under Document Number L05000026223.

2. Pursuant to the requirements of Section 608.411 of the Florida Limited Liability Company Act (the "Act"), the undersigned hereby certifies, attests and serves notice that the Articles of Organization of the Company, as amended, are hereby amended and restated to read in their entirety as follows:

ARTICLE I - NAME

The name of the Company is SWERDLOW HOLLY HILL I GP, LLC.

ARTICLE II - PRINCIPAL OFFICE AND MAILING ADDRESS

The principal office and mailing address of the Company is:

321 East Hillsboro Boulevard
Deerfield Beach, Florida 33441

ARTICLE III - MANAGING MEMBER

The limited liability company shall be managed by the Member. The name and address of the Member are as follows:

Bonefish Partners, LLC
3390 Mary Street, Suite 200
Coconut Grove, Florida 33133

ARTICLE IV - PURPOSE

The Company's sole business and purpose is to acquire a five-tenths of one percent (0.5%) general partnership interest (such interest, the "Partnership Interest") in, and act as one of the general partners of, HOLLY HILL I ASSOCIATES, LTD., a Florida limited partnership (the "Partnership"), and conduct activities related thereto.

H05000273372 3

ARTICLE V - REGISTERED OFFICE AND AGENT

The street address of the registered office of the Company is:

321 East Hillsboro Boulevard
Deerfield Beach, Florida 33441;

and the name and address of the registered agent of the Company are:

Theodore R. Stotzer
321 East Hillsboro Boulevard
Deerfield Beach, Florida 33441

ARTICLE VI - COMMENCEMENT

The Company commenced on March 15, 2005, the date on which the Articles of Organization were filed with the Secretary of State of the State of Florida under Document Number L05000026223.

ARTICLE VII - SEPARATENESS PROVISIONS

Notwithstanding anything contained herein to the contrary, until: (i) that certain secured loan in the original principal amount of \$192,000,000 (the "Loan") made by HSH Nordbank AG New York Branch, a branch of foreign bank licensed under the laws of the State of New York (the "Lender"), to the Partnership pursuant to that certain Loan Agreement to be entered into by and between Lender and the Partnership (the "Loan Agreement"); (ii) that certain revolving line of credit for loans and letters of credit (the "Revolving Credit Indebtedness"), made to the Original Borrowers (as defined below) by the Lender in the original principal amount of up to Seventy-Five Million Dollars (\$75,000,000.00), pursuant to that certain Revolving Credit Agreement (as amended by the Amendment and as further amended, restated, modified or supplemented from time to time, the "Revolving Credit Agreement"), dated as of June 27, 2005, by and among Boca Holly Hill GP, Inc., Boca Holly Hill LP, Ltd., Swardlow Holly Hill GP, LLC, BF Holly Hill, LLC, Boca Marina Grande GP, Inc., Boca Marina Grande LP, Ltd., Swardlow Marina Grande GP, LLC, BF Marina Grande, LLC and Biscayne Landing, LLC (collectively, the "Original Borrowers"), the Guarantors from time to time party thereto, and the Lender, as Administrative Agent, Issuing Bank, and certain other lenders from time to time party thereto, as amended by that certain Amendment Number One to Revolving Credit Agreement (the "Amendment"), by and among the Original Borrowers, Boca Holly Hill I GP, Inc., Boca Holly Hill I Associates LP, Ltd., the Company and BF Holly Hill I, LLC, the Guarantors from time to time party thereto, and the Lender, as Administrative Agent, Issuing Bank, and certain other lenders from time to time party thereto; and (iii) any and all indebtedness incurred by the Partnership or the Company in favor of the Lender, is paid in full, the Company at all times since its formation and at all times thereafter:

FILED
2005 NOV 29 AM 10:55
CLERK OF THE CIRCUIT COURT
PALM BEACH COUNTY, FLORIDA

H05000273372 3

FILED
2005 NOV 29 AM 10:55
TALLAHASSEE, FLORIDA

(a) was and will be organized solely to acquire the Partnership Interest in, and act as one of the general partners of, the Partnership, and conduct activities related thereto;

(b) has not engaged and will not engage in any business unrelated to the ownership of the Partnership Interest;

(c) has not had and will not have any assets other than those related to the Partnership Interest;

(d) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale, transfer of Equity Interests (as defined below) or the like, or amendment of its Organizational Documents (as defined below) except as expressly permitted in the Revolving Credit Agreement and the Loan Agreement;

(e) has and will have articles of organization and an operating agreement, providing that (A) the Company shall dissolve only upon the bankruptcy of the managing member, (B) the vote of a majority-in-interest of the remaining members is sufficient to continue the life of the Company in the event of such bankruptcy of the managing member and (C) if the vote of a majority-in-interest of the remaining members to continue the life of the Company following the bankruptcy of the managing member is not obtained, the Company may not liquidate the Partnership Interest or its other assets, as applicable, without the consent of Lender for as long as the (i) Indebtedness (as defined in the Loan Agreement) with respect to the Partnership; and (ii) any and all other indebtedness incurred by the Partnership or the Company in favor of the Lender (including, but not limited to, the Revolving Credit Indebtedness with respect to the Company), are outstanding;

(f) has not, and without the unanimous consent of all of the holders of its Equity Interests, will not, with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest (i) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (ii) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such entity or for all or any portion of such entity's assets, (iii) make any assignment for the benefit of such entity's creditors, or (iv) take any action that might cause such entity to become insolvent;

(g) has remained and will remain solvent and has maintained and will maintain adequate capital in light of its contemplated business operations;

(h) has not failed and will not fail to correct any known misunderstanding regarding its separate identity;

(i) has maintained and will maintain its accounts, books and records separate from any other Person (as defined below) and will file its own tax returns, if required to file tax returns;

H05000273372 3

(j) has maintained and will maintain its books, records, resolutions and agreements as official records;

(k) has not commingled and will not commingle its funds or assets with those of any other Person;

(l) has held and will hold its assets in its own name;

(m) has conducted and will conduct its business in its name,

(n) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person;

(o) subject to Subsection (u) below, has paid and will pay its own liabilities, including the salaries of its own employees, out of its own funds and assets, provided that this provision shall not be deemed to require any holder of an Equity Interest to make additional capital contributions;

(p) has observed and will observe all limited liability company formalities;

(q) has maintained and will maintain an arm's-length relationship with its Affiliates;

(r) has and will have no indebtedness other than the Revolving Credit Indebtedness and unsecured trade payables in the ordinary course of business which are paid within sixty (60) days of the date incurred;

(s) has not and will not assume or guarantee or become obligated for the debts of any other Person other than the Partnership or hold out its credit as being available to satisfy the obligations of any other Person other than the Partnership except in connection with the Revolving Credit Indebtedness or the Loan;

(t) has not and will not acquire obligations or securities of the holders of its Equity Interests;

(u) has allocated and will allocate fairly and reasonably shared expenses, including shared office space, and uses separate stationery, invoices and checks;

(v) except as security for its obligations under: (i) the Loan or (ii) any and all other indebtedness incurred by the Partnership or the Company in favor of the Lender (including, but not limited to, the Revolving Credit Indebtedness with respect to the Company), has not pledged and will not pledge its assets for the benefit of any other Person;

(w) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;

H05000273372 3

FILED
2005 NOV 29 AM 10:55
TALLAHASSEE, FLORIDA

(x) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(y) has not made and will not make loans to any Person;

(z) has not identified and will not identify the holders of its Equity Interests, or any of their Affiliates (as defined below), as a division or part of it;

(aa) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its members or Affiliates, except in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;

(bb) has and will have no obligation to indemnify its officers or members, as the case may be, or has such an obligation that is fully subordinated to the Revolving Credit Indebtedness and will not constitute a claim against it if cash flow in excess of the amount required to pay the Revolving Credit Indebtedness is insufficient to pay such obligation; and

(cc) will consider the interests of its creditors in connection with all limited liability company actions.

For purposes of this Article VII, the following terms shall have the following definitions:

"Affiliate" means, as determined with respect to any Person, means any other Person:

(i) that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such Person;

(ii) that, directly or indirectly, beneficially owns or holds ten (10%) percent or more of any class of stock or any other ownership interest in such Person;

(iii) with respect to which ten (10%) percent or more of the direct or indirect ownership is beneficially owned or held by such Person;

(iv) that is a member of the family (as defined in Section 267(c)(4) of the Internal Revenue Code of 1986, as amended) of such Person; or

(v) that directly or indirectly is a manager, managing member, general partner, officer or director of such Person.

H05000273372 3

"Equity Interests" means shares of capital stock, general or limited partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

"Organizational Documents" means, with respect to any Person that is not a natural Person, its constituent, governing or organizational documents and any other agreements governing its organization and the management of its business and affairs, including (a) for any corporation, its articles of incorporation and by-laws, and all amendments thereto, (b) for any limited liability company, its operating agreement and articles of organization, and all amendments thereto, and (c) for any limited partnership, its limited partnership agreement and certificate of limited partnership, and all amendments thereto.

"Person" means any individual, corporation, limited liability company, general partnership, limited partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other form of entity.

ARTICLE VIII - INDEMNIFICATION

The Company shall indemnify any officer, authorized person or representative, or any former officer, authorized person or representative, of the Company to the fullest extent permitted by law, provided that for all periods in which any indebtedness incurred by the Partnership or the Company in favor of the Lender (including, but not limited to, the Revolving Credit Indebtedness with respect to the Company), is outstanding, such indemnification obligation shall be subordinate to the repayment in full of any indebtedness incurred by the Partnership or the Company in favor of the Lender (including, but not limited to, the Revolving Credit Indebtedness with respect to the Company).

FILED
2005 NOV 29 AM 10:56
DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA

NOV. -28' 05 (MON) 17:51

BILZIN SUMBERG

P. 008/008

H05000273372 3

IN WITNESS WHEREOF, these Amended and Restated Articles of Organization have been executed by the Member in accordance with the provisions of Section 608.411 of the Act as of the 28 day of November, 2005 on behalf of the Company.

MEMBER:

BONBFISH PARTNERS, LLC, a
Delaware limited liability company

By: 

Name: Theodore R. Stotzer

Title: Vice President

FILED
2005 NOV 29 AM 10:56
OFFICE OF CORPORATIONS
TALLAHASSEE, FLORIDA