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B. KOHR

OCT - 8 2008

EXAMINER

CORPDIRECT AGENTS, INC. (formerly CCRS)  
515 EAST PARK AVENUE  
TALLAHASSEE, FL 32301  
222-1173

FILING COVER SHEET  
ACCT. #FCA-14

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CONTACT: KATIE WONSCH

DATE: 10/07/08

REF. #: 000150.94110

CORP. NAME: 888 BISCAVNE HOLDINGS, LLC

- ARTICLES OF INCORPORATION       ARTICLES OF AMENDMENT       ARTICLES OF DISSOLUTION
- ANNUAL REPORT       TRADEMARK/SERVICE MARK       FICTITIOUS NAME
- FOREIGN QUALIFICATION       LIMITED PARTNERSHIP       LIMITED LIABILITY
- REINSTATEMENT       MERGER       WITHDRAWAL
- CERTIFICATE OF CANCELLATION
- OTHER:

STATE FEES PREPAID WITH CHECK# 527862 FOR \$ 125.00

AUTHORIZATION FOR ACCOUNT IF TO BE DEBITED:

\_\_\_\_\_ COST LIMIT: \$ \_\_\_\_\_

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Examiner's Initials

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TALLAHASSEE, FLORIDA

**ARTICLES OF ORGANIZATION  
OF  
888 BISCAYNE HOLDINGS, LLC**

These Articles of Organization have been filed with the Florida Department of State in accordance with the Florida Limited Liability Company Act, Chapter 608, Florida Statutes (the "Act"). Capitalized terms used herein are intended to be defined terms and shall have the meanings ascribed to them herein.

**ARTICLE I**

**NAME**

The name of the Limited Liability Company is 888 Biscayne Holdings, LLC (the "Company").

**ARTICLE II**

**ADDRESS**

The mailing address and street address of the principal office of the Company is 3211 Ponce de Leon Blvd., Ste. 305, Coral Gables, FL 33134.

**ARTICLE III**

**REGISTERED AGENT AND OFFICE**

The name and street address of the Company's initial registered agent and office are:

Michael Mermelstein  
c/o Mermelstein Hidalgo, LLP  
3211 Ponce de Leon Blvd., Suite 305  
Coral Gables, Florida 33134

**ARTICLE IV**

**MANAGEMENT**

The Company is a "manager-managed" limited liability company for purposes of the Act. The Company's managers shall be appointed in such manner and serve in such position according to such terms and conditions as provided in the Company's Operating Agreement dated the date that these Articles were filed with the Florida Department of State, as such agreement may be amended ("Operating Agreement").

## ARTICLE V

### COMPANY'S EXCLUSIVE PURPOSE

The nature of the business and of the purposes to be conducted and promoted by the Company, is to engage solely in the following activities:

- A. To own, hold, sell, assign, transfer, operate, lease, manage, mortgage, pledge and otherwise deal with that certain parcel of real property, together with all improvements located thereon, located at 888 Biscayne Blvd., Miami, Florida, which has been mortgaged and pledged to Kennedy Funding, Inc., a New Jersey corporation, as collateral pursuant to that certain Loan and Security Agreement on or about the date of the filing of these Articles of Organization (the "Property").
- B. To exercise all powers enumerated in the Act necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth in this Article V.

## ARTICLE VI

### SPECIAL PURPOSE ENTITY PROVISIONS

1. Duration of this Article VI. For so long as the Company has a mortgage loan with Kennedy Funding, Inc., a New Jersey corporation, its successors or assigns (the "Loan"), the terms and conditions set forth in this Article VI shall apply notwithstanding any contrary provisions set forth in these Articles of Organization or the Operating Agreement of the Company, as amended.

2. Certain Prohibited Activities. The Company shall only incur indebtedness in an amount necessary to operate and maintain the Property. For so long as any mortgage lien in favor of Kennedy Funding, Inc., its successors or assigns (the "First Mortgage") exists on any portion of the Property, the Company shall not incur, assume, or guaranty any other indebtedness other than in an amount necessary to operate and maintain the Property. Subject to the terms and conditions of this Article VI, for so long as the First Mortgage exists on any portion of the Property, the Company shall not dissolve or liquidate. For so long as the First Mortgage exists on any portion of the Property, the 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 Company) formed or surviving such consolidation or merger or that acquires by conveyance or transfer the properties and assets of the 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 be acceptable to the mortgagee holding the First Mortgage, in its sole discretion, and (c) shall expressly assume the due and punctual performance of the 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 Company and be continuing. In addition to the provisions set forth herein, for so long as the First Mortgage exists on any portion of the Property, no material amendment to these Articles of Organization may be made without first obtaining approval of

the mortgagee holding the First Mortgage on any portion of the Property, or, after the securitization of the Loan, only if the Company receives (i) confirmation from each of the applicable rating agencies that such amendment would not result in the qualification, withdrawal or downgrade of any securities rating and (ii) approval of such amendment by the mortgagee holding the First Mortgage. No transfer of any direct or indirect ownership interest in the Company may be made such that the transferee owns, in the aggregate with the ownership interests of its affiliates and family members in the Company, more than a 49% interest in the Company, unless such transfer is conditioned upon the delivery of an acceptable non-consolidation opinion to the holder of the First Mortgage and to any applicable rating agency concerning, as applicable, the Company, the new transferee and/or their respective owners.

3. **Indemnification.** Any indemnification of the Company's members and/or managers shall be fully subordinated to any obligations respecting the Property (including, without limitation, the First Mortgage) and such indemnification shall not constitute a claim against the Company in the event that cash flow necessary to pay holders of such obligations is insufficient to pay such obligations.

4. **Separateness Covenants.** For so long as the First Mortgage exists on any portion of the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in the Operating Agreement, the Company shall conduct its affairs in accordance with the following provisions:

(i) It shall establish and maintain an office through which its business shall be conducted separate and apart from those of any affiliate(s) or, if it shares office space with any affiliate(s), it shall allocate fairly and reasonably any overhead and expense for shared office space.

(ii) It shall not own and will not own any asset or property other than (i) the Property and (ii) incidental personal property necessary for the ownership or operation of the Property.

(iii) It will not engage, directly or indirectly, in any business other than the ownership, management and operation of the Property and it will conduct and operate its business as presently conducted and operated. It shall conduct its business and hold its assets in its own name.

(iv) It will not enter into any contract or agreement with any affiliate of the Company, any constituent party of the Company or any affiliate of any constituent party of the Company, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party (or where the benefit flows to the Company).

(v) It has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the indebtedness secured by the First Mortgage and (ii) trade payables or accrued expenses incurred in the ordinary course of the business of operating

the Property with trade creditors and in amounts as are normal and reasonable under the circumstances. No indebtedness other than the indebtedness secured by the First Mortgage may be secured (subordinate or pari passu) by the Property.

(vi) It has not made and will not make any loans or advances to any third party, including any affiliate of the Company or constituent party of the Company and shall not acquire obligations or securities of its affiliate(s).

(vii) It is and will remain solvent and will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

(viii) It has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and it will not materially amend, modify or otherwise change the Articles of Organization or the Operating Agreement without the prior written consent of the First Mortgage holder or, after the securitization of the Loan, only if the Company receives approval of such amendment by the mortgagee holding the First Mortgage.

(ix) It will maintain all of its books, records, financial statements and bank accounts separate from those of its affiliate(s) and any constituent party. It shall maintain its books, records, resolutions and agreements as official records.

(x) It will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate or any constituent party of the Company), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct and operate its business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks.

(xi) It will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(xii) Neither the Company nor any constituent party will seek or permit the dissolution, winding up, liquidation, consolidation or merger in whole or in part, of the Company, or acquire by purchase or otherwise all or substantially all the business or assets of, or any stock or other evidence of beneficial ownership of any other person or entity.

(xiii) It will not commingle the funds and other assets of the Company with those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person.

(xiv) It has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual asset or assets, as the case may

be, from those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person.

(xv) It shall not pledge its assets and does not and will not hold itself out to be responsible for the debts or obligations of any other person or entity.

(xvi) It shall pay any liabilities out of its own funds, including salaries of any employees.

(xvii) The Company shall maintain a sufficient number of employees in light of its contemplated business operations.

(xviii) The Company shall not guarantee or become obligated for the debts of any other entity or person.

(xix) It shall not have any of its obligations guaranteed by any members, except the guarantor of the First Mortgage.

(xx) It shall have at least one (1) Independent Manager.

5. **Amendments.** The members and/or managers, shall not, so long as the Loan is outstanding, amend, alter, change or repeal the definitions set forth below of any provision of this **Article VI** or adopt any provision in conflict therewith without the unanimous written consent of Kennedy Funding, Inc., its successors or assigns, the Independent Manager, and all of the members and managers of the Company.

6. **Material Actions.** Notwithstanding anything contained herein to the contrary and any provision of law that otherwise so empowers the Company, the members, the managers, any officer or any other Person, neither the members nor the managers nor any officer nor any other Person shall be authorized or empowered, nor shall they permit the Company, without the prior unanimous written consent of the members, the managers and the Independent Manager, to take any Material Action, provided, however, that neither the members nor the managers may vote on, or authorize the taking of, any Material Action, unless there is at least one (1) Independent Manager then serving in such capacity.

7. **Independent Manager.** As long as the Loan is outstanding, the members and managers shall cause the Company at all times to have at least one (1) Independent Manager who will be appointed by the members and is acceptable to Kennedy Funding, Inc., its successors or assigns, in its sole discretion. The Independent Manager shall be, and is hereby designated as a "manager" within the meaning of the Act, and shall have only those powers in management of the business and affairs of the Company as shall be specifically provided in this **Article VI**. To the fullest extent permitted by law, the Independent Manager shall consider only the interests of the Company, including its respective creditors, in acting or otherwise voting on the matters referred to in **Section 6** of this **Article VI**. No resignation or removal of an Independent Manager, and no appointment of a successor Independent Manager, shall be effective until such successor (i) shall have accepted his or her appointment as an Independent Manager by written

instrument, and (ii) shall have executed a counterpart to the Operating Agreement. In the event of a vacancy in the position of Independent Manager, the members shall, as soon as practicable, appoint a successor Independent Manager acceptable to Kennedy Funding, Inc., its successors or assigns, in its sole discretion. All right, power and authority of the Independent Manager shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Article VI. Except as provided in the third sentence of this Section 7, in exercising their rights and performing their duties under this Article VI or Operating Agreement, any Independent Manager shall have a fiduciary duty of loyalty and care similar to that of a director of a business corporation organized under the laws of the state in which the Company is organized. No Independent Manager shall at any time serve as trustee in bankruptcy for any Affiliate of the Company.

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

**"Affiliate"** of any Person (as hereinafter defined) shall mean any other Person which, directly or indirectly, controls or is controlled by, or is under common control with such Person. For the purposes of this definition, "controls" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

**"Independent Manager"** shall mean a Person who is not at the time of initial appointment, or at any time while serving as a director or manager, as applicable, and has not been at any time during the preceding five (5) years: (a) a stockholder, director (with the exception of serving as the Independent Manager), officer, employee, partner, member, manager, contractor or attorney of the Company or any Affiliate of any of them; (b) a customer, creditor or other person who derives any of its purchases or revenues from its activities with the Company or any Affiliate; (c) a Person controlling or under common control with any such stockholder, director, officer, partner, member, manager, contractor, customer, creditor, supplier or other Person; or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, manager, contractor, customer, creditor or other Person. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

**"Material Action"** means to file any insolvency, or reorganization case or proceeding, to institute proceedings to have the Company be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, to consent to the filing or institution of bankruptcy or insolvency proceedings against the Company, to file a petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy or insolvency, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for the Company or a substantial part of its property, to make any assignment for the benefit of creditors of the



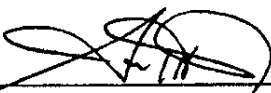
Company, to admit in writing the Company's inability to pay its debts generally as they become due, or to take action in furtherance of any of the foregoing.

"Person" or "Persons" shall mean any one or more individuals, partnerships, corporations (including a business trust), joint stock companies, limited liability company, trusts, unincorporated associations, joint ventures or other entities, or a foreign state or political subdivision thereof or any agency of such state or subdivision.

\* \* \*

In accordance with Section 608.408(3) of the Act, the execution of this document constitutes an affirmation under the penalties of perjury that the facts stated herein are true.

Dated this 6 day of October, 2008.

  
\_\_\_\_\_  
Avra Jain, as Manager and Authorized Person

**ACCEPTANCE OF APPOINTMENT OF REGISTERED AGENT**

The undersigned, having been named as Registered Agent and to accept service of process for the above stated limited liability company at the place designated in these Articles of Organization, the undersigned hereby accepts the appointment as registered agent and agrees to act in this capacity. The undersigned further agrees to comply with the provisions of all statutes relating to the proper and complete performance of its duties, and is familiar with and accepts the obligations of its position as registered agent as provided for in Florida Statutes, Chapter 608.

Dated this 4th day of October, 2008.

By:   
Name: Michael Mermelstein