

L99000007204

(Requestor's Name)

(Address)

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(City/State/Zip/Phone #)

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(Business Entity Name)

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TALLAHASSEE, FLORIDA

DEPARTMENT OF STATE
ACCOUNT FILING COVER SHEET

Account Number FCA000000017

Reference:
(Sub Account)

Date:

7/18/03

Requestor Name:

Carlton Fields

Address:

Post Office Drawer 190
Tallahassee, Florida 32302

Telephone:

(850) 224-1585

Contact Name:

Kim Pullen, CLA (x261)

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Corporation Name:

Castillo Grand LLC

Entity Number:

L99000007204

Authorization:

Kim Pullen

☒ Certified Copy (4)

☐ New Filings

☐ Fictitious Name

☐ Plain Stamped Copy

☐ Amendments

☐ Certificate of Status

☐ Annual Report

☐ Registration

(X) Call When Ready

(X) Call if Problem

() After 4:30

(X) Walk In

() Will Wait

(X) Pick Up

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Client: 47377

Matter: 12360

Name: Joel Giles

Office: St. Pete

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**AMENDED AND RESTATED
ARTICLES OF ORGANIZATION
OF
CASTILLO GRAND LLC**

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TALLAHASSEE, FLORIDA

The undersigned, acting as the authorized representative for Castillo Grand LLC, a Florida limited liability company whose Articles of Organization were originally filed with the Florida Department of State on October 29, 1999 under document number L99000007204, hereby adopts these Amended and Restated Articles of Organization which amend, restate, and replace the original Articles of Organization and all amendments thereto in their entirety.

**ARTICLE I
NAME OF COMPANY**

The name of this limited liability company shall be: Castillo Grand LLC (the "Company").

**ARTICLE II
ADDRESS**

The mailing and street address of the Company's principal office is:

2455 East Sunrise Boulevard, Suite 916
Fort Lauderdale, Florida 33304

**ARTICLE III
REGISTERED AGENT AND REGISTERED OFFICE**

The Company's registered agent and registered office in the State of Florida is:

CFRA, LLC
One Harbour Place
777 S. Harbour Island Boulevard, 5th Floor
Tampa, FL 33602-5730

**ARTICLE IV
MANAGEMENT OF THE COMPANY**

The Company is to be a manager-managed company. The name and address of the manager is:

CG Managing Member Inc.
2455 East Sunrise Boulevard, Suite 916
Fort Lauderdale, Florida 33304

**ARTICLE V
MEMBERS**

As of the date hereof, the members of the Company and their respective membership interests are:

<u>Member</u>	<u>Membership Interest</u>
CG Mezzanine Owner LLC, a Florida limited liability company	99.5%
CG Managing Member Inc., a Florida corporation	<u>0.5%</u>
Total	100.00%

**ARTICLE VI
PURPOSE**

Notwithstanding any provision hereof or of any other document governing the formation, management, or operation of the Company to the contrary, the following shall govern: 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. The Company's activities shall be limited to those with respect to that certain parcel of real property, together with all improvements located or to be constructed thereon, in the City of Fort Lauderdale, State of Florida (the "Property"), which the Company is developing as the St. Regis Resort, Spa and Residences (the "Project").
- B. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property and the Project.
- C. The Company shall exercise all powers enumerated in the Chapter 608 of the Florida Statutes, necessary or convenient to the conduct, promotion, or attainment of the business or purposes otherwise set forth herein.

**ARTICLE VII
CERTAIN PROHIBITED ACTIVITIES**

Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Company to the contrary, the following shall govern:

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The Company shall only incur indebtedness in an amount necessary to acquire, operate and maintain the Project at the Property. For so long as any mortgage lien exists on the Property, the Company shall not incur, assume, or guaranty any other indebtedness.

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 acquired 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 include in its organizational documents the same limitations set forth in this Article VII and in Articles VI, VIII, IX, X, and XI, 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.

For so long as a mortgage lien exists on the Property, the 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 Company. For so long as a mortgage lien exists on the Property, (i) no amendment to these Amended and Restated Articles of Organization may be made, and (ii) the Company shall not be dissolved, liquidated, or terminated without first obtaining approval of the mortgagee holding a first mortgage lien on the Property.

Notwithstanding the foregoing, the Company shall not have any indebtedness other than (i) an initial land acquisition loan secured by a mortgage encumbering the Property, which shall be repaid by a construction loan that will finance the construction of the Project and will be secured by a mortgage encumbering the Property, and which, upon substantial completion of the Project, will be repaid by a take out and/or permanent loan, which also will be secured by a mortgage encumbering the Property (any such loan a "Mortgage Loan"), (ii) trade payables to be incurred in the ordinary course of business relating to the ownership and operation of the Property and the routine administration of the Company in amounts not to exceed the amounts permitted under the Mortgage Loan outstanding from time to time, which liabilities are not to be more than sixty (60) days past the date incurred, are not to be evidenced by a note, and are to be paid when due and which amounts are to be normal and reasonable under the circumstances, and (iii) such other liabilities that are consented to by the mortgage lender holding the mortgage that shall encumber the Property.

ARTICLE VIII INDEMNIFICATION

Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Company to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the Property and shall not

constitute a claim against the Company in the event that cash flow is insufficient to pay such obligations.

ARTICLE IX SEPARATENESS COVENANTS

Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Company to the contrary, the following shall govern:

For so long as any mortgage lien exists on the Property, 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 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.

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13. It shall hold itself out as an entity separate from any affiliate.
14. It shall correct any known misunderstanding regarding its separate identity.
15. At all times all managing members shall be a special purpose corporate member with at least two (2) Independent Directors.

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

"Affiliate" means any person controlling or controlled by or under common control with the Company including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any partner or employee of the Company, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this 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.

"Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, may not have been at any time, and may not become (i) a partner, member, shareholder of, or an officer or employee of, the Company or any of its respective partners, members, shareholders, subsidiaries or affiliates, (ii) a customer, supplier, or other Person who derives more than one (1%) percent of its purchases or revenues from its activities with the Company or its affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Company or of the managing member of the Company. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise. "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 X DISSOLUTION

Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Company to the contrary, the following shall govern:

To the extent permissible under applicable federal and state tax law, the vote of a majority-in-interest of the remaining members is sufficient to continue the life of the Company. If such vote is not obtained, for so long as a mortgage lien exists on the Property the Company shall not liquidate the Property without first obtaining approval of the mortgagee holding a first mortgage lien on the Property. Such holders may continue to exercise all of their rights under the existing security agreements or mortgages until the debt underlying the mortgage liens has been paid in full or otherwise completely discharged.

ARTICLE XI VOTING

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

ARTICLE XII CERTIFICATES OF MEMBERSHIP INTEREST

- A. Membership Interest. A Member's limited liability company interest in the Company shall be represented by the Certificates of Membership Interest issued to such Member by the Company. All of a Member's Certificates of Membership Interest, in the aggregate, represent such Member's entire limited liability company interest in the Company. The Member hereby agrees that its interest in the Company and in its Certificates of Membership Interest shall for all purposes be personal property. A Member has no interest in specific Company property. "Membership Interest" means a limited liability company interest in the Company held by a Member.
- B. Certificates of Membership Interests.
1. Upon the issuance of Certificates of Membership Interest to any Member in accordance with the provisions of these Articles, the Company shall issue one or more Certificates of Membership Interests in the name of such Member. Each such Certificate shall be denominated in terms of the number of Certificates of Membership Interest evidenced by such Certificate of Membership Interest and shall be signed by the Member on behalf of the Company. "Certificate of Membership Interest" means a non-negotiable certificate issued by the Company, which evidences the ownership of one or more Certificates of Membership Interest. Each Certificate of Membership Interest shall bear the following legend:

"This certificate evidences an interest in Castillo Grand LLC, a Florida limited liability company, and is a security governed by, and shall be a certificated security for purposes of, Article 8 of the Uniform Commercial Code of the State of Florida and the Uniform Commercial Code of any other Jurisdiction."

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This provision shall not be amended, and no such purported amendment to this provision shall be effective until all outstanding certificates have been surrendered for cancellation.

2. The Company shall issue a new Certificate of Membership Interest in place of any Certificate of Membership Interest previously issued if the holder of the Certificates of Membership Interest represented by such Certificate of Membership Interest, as reflected on the books and records of the Company,
 - a. makes proof by affidavit, in form and substance satisfactory to the Company, that such previously issued Certificate of Membership Interest has been lost, stolen or destroyed.
 - b. requests the issuance of a new Certificate of Membership Interest before the Company has notice that such previously issued Certificate of Membership Interest has been acquired by a purchaser for value in good faith and without notice of an adverse claim;
 - c. if requested by the Company, delivers to the Company a bond, in form and substance satisfactory to the Company, with such surety or sureties as the Company may direct, to indemnify the Company against any claim that may be made on account of the alleged loss, destruction or theft of the previously issued Certificate of Membership Interest; and
 - d. satisfies any other reasonable requirements imposed by the Company.
3. Upon a Member's Transfer in accordance with the provisions of this Agreement of any or all Certificates of Membership Interest represented by a Certificate of Membership Interest, the Transferee of such Certificates of Membership Interest shall deliver such Certificate of Membership Interest to the Company for cancellation, and the Company shall thereupon issue a new Certificate of Membership Interest to such Transferee for the number of Certificates of Membership Interest being Transferred and, if applicable, cause to be issued to such Member a new Certificate of Membership Interest

for that number of Certificates of Membership Interest that were represented by the canceled Certificate of Membership Interest and that are not being Transferred. "Transfer" means, with respect to any Certificates of Membership Interest, and when used as a verb, to sell or assign such Certificates of Membership Interest, and, when used as a noun, shall have a meaning that correlates to the foregoing. "Transferee" means an assignee or Transferee. "Transferor" means the Person making a Transfer.

- C. Free Transferability. Except as limited by a certain Construction Loan Agreement to be made by and among the Company, Canadian Imperial Bank of Commerce, New York Agency, as administrative agent, and CIBC Inc. and the banks that, from time to time, are parties thereto ("Construction Loan Agreement"); a certain Loan and Security Agreement to be made by and between the Company and German American Capital Corporation ("Permanent Loan Agreement"); and a certain Pledge and Security Agreement to be made by and between GC Mezzanine Owner LLC and Deutsche Bank AG, New York Branch, ("Pledge Agreement (Deferred Forward Commitment Fee)") to be entered into by the Company, to the fullest extent permitted by Chapter 608 of the Florida Statutes, any Member may, at any time or from time to time, without the consent of any other Person, Transfer, pledge or encumber any or all of its Certificates of Membership Interest. Subject to the restrictions of the Construction Loan Agreement, Permanent Loan Agreement and Pledge Agreement (Deferred Forward Commitment Fee), the Transferee of any Certificates of Membership Interest shall be admitted to the Company as a substitute member of the Company on the effective date of such Transfer upon (i) such Transferee's written acceptance of the terms and provisions of these Amended and Restated Articles of Organization and its written assumption of the obligations hereunder of the Transferor of such Certificates of Membership Interest, which shall be evidenced by such Transferee's execution and delivery to the Company of an Application for Transfer of Certificates of Membership Interest on the reverse side of the Certificate of Membership Interest representing the Certificates of Membership Interest being Transferred, and (ii) the recording of such Transferee's name as a Substitute Member on the books and records of the Company. Any Transfer of any Certificates of Membership Interest pursuant to this Section XIIC shall be effective as of the later of (i) the close of business on the day on which such Transfer occurs, or (ii) the effective date and time of such Transfer that is designated in the Application for Transfer of Certificates of Membership Interest delivered by the Transferee to the Company.

These Amended and Restated Articles of Organization are being filed pursuant to Section 608.41 of the Florida Statutes and have been duly executed by the undersigned authorized representative of the Company on this 14th day of July, 2003.

CG MANAGING MEMBER INC.

By: 

FRED B. BULLARD, JR.,
its President and Chief Executive Officer

Attest: 

GREGORY D. MORRIS,
its Treasurer

(CORPORATE SEAL)

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TALLAHASSEE, FLORIDA

ACCEPTANCE BY REGISTERED AGENT

Having been named as registered agent and to accept service of process for the Company, at the place designated as the registered office, 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 the undersigned's duties, and the undersigned is familiar with and accepts the duties and obligations of the undersigned's position as registered agent.

Dated this 14th day of July, 2003.

CFRA, LLC,
a Florida limited liability company

By: 

Joel B. Giles, Esquire

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CLERK OF DISTRICT COURT
TALLAHASSEE, FLORIDA