

PO1000115810

Florida Department of State
Division of Corporations
Public Access System
Katherine Harris, Secretary of State

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.

((H01000119495 9)))

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) 205-0381

From:

Account Name : TURNBERRY ASSOCIATES
Account Number : I19990000201
Phone : (305) 933-5505
Fax Number : (305) 933-5535

FLORIDA PROFIT CORPORATION OR P.A.

Monroeville Mall, Inc.

Certificate of Status	1
Certified Copy	0
Page Count	07 (8)
Estimated Charge	\$78.75

S. McKnight DEC - 6 2001

FILED
01 DEC - 6 PM 4:01
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

H01000119495 7

STATE OF FLORIDA
DEPARTMENT OF STATE
CORPORATION BUREAU
ARTICLES OF INCORPORATION
OF
MONROEVILLE MALL, INC.

FILED
01 DEC -6 PM 4:01
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The undersigned, intending to form a corporation for profit under the Florida Business Corporation Act, as amended (the "Act"), hereby certifies as follows:

ARTICLE 1

Name

The name of the corporation is Monroeville Mall, Inc. (the "Corporation").

ARTICLE 2

Principal Office

The street address of the initial principal office, and, if different, the mailing address of the corporation is: c/o Turnberry Associates, 19501 Biscayne Blvd., Suite 400, Aventura, Florida 33180, Attn: Ken Bernstein.

ARTICLE 3

Stock

The Corporation shall have the authority to issue ten thousand (10,000) shares of common stock, with a par value of one dollar (\$1.00) per share.

ARTICLE 4

Registered Office

The address of the initial registered office of the Corporation in the State of Florida is c/o Turnberry Associates, 19501 Biscayne Blvd., Suite 400, Aventura, Florida, 33180, Attn: Ken Bernstein.

Having been named as registered agent and to accept service of process for the above stated corporation at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

H010001194959



Ken Bernstein - Registered Agent

12/6/2001
DateRECEIVED
SECRETARY OF STATE
FLORIDA
DEC-6 PM 4:01

ARTICLE 5 Incorporator

The name and address of the incorporator is Ken Bernstein, Turnberry Associates, 19501 Biscayne Blvd., Suite 400, Aventura, Florida 33180.

ARTICLE 6 Purpose

Subject to the limitations set forth in Article 7, the purpose for which the Corporation is organized shall be to engage in any lawful act or business for which a corporation may be organized under Florida law.

The Corporation shall serve as a general partner of Monroeville Mall Partners, L.P. (the "Partnership"), a Florida limited partnership, as long as that certain Loan, as defined in the Loan Agreement (the "Loan Agreement") between the Partnership and Lehman Brothers Holdings Inc., doing business as Lehman Capital, a division of Lehman Brothers Holdings Inc. ("LBHI"), and evidenced by that certain promissory note (the "Note") of even date therewith in favor of LBHI, is outstanding.

ARTICLE 7 Management

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors of the Corporation (the "Board"). The following provisions are inserted for the management of the business, and for the conduct of the affairs, of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its Board and shareholders, and the Corporation shall cause the Partnership to observe such provisions if and as applicable to the Partnership and required by the Loan Agreement. Notwithstanding any other provision of these Articles of Incorporation to the contrary, for as long as the Loan remains outstanding:

(1) The purposes for which the Corporation is organized shall be limited solely to (a) being a partner and/or general partner of the Partnership, (b) acting as, and exercising all of the authority of, a partner and/or general partner of the Partnership, and (c) transacting any and all lawful business for which a corporation may be organized under Florida law that is incident, necessary and appropriate to accomplish the foregoing.

(2) The Corporation will not own any asset or property other than (i) partnership interests in the Partnership and (ii) incidental personal property necessary for and used or to be used in connection with the ownership or operation of the Partnership.

- (3) The Corporation will not engage in any business other than the ownership, management and operation of the Partnership.
- (4) The Corporation will not enter into any contract or agreement with any Affiliate of the Corporation, any constituent party of the Corporation, any owner of the Corporation, any guarantors of the obligations of the Corporation or any Affiliate of any constituent party, owner or guarantor (collectively, the "Related Parties"), except upon terms and conditions that are commercially reasonable and substantially similar to those that would be available on an arm's-length basis with third parties not so affiliated with the Corporation or such Related Parties. For these purposes, (i) the term "Affiliate" means, as to any person, any other person that, directly or indirectly, is in control of, is controlled by, or is under common control with such person or is a director or officer of such person or of an Affiliate of such person; and (ii) the term "control" (and the correlative terms "controlled by" and "controlling") means the possession, directly or indirectly, of the power to direct or cause the direction of management policies or activities of a person or entity whether through ownership of voting securities, by contract or otherwise.
- (5) The Corporation will not incur any Indebtedness other than (i) Indebtedness on behalf of the Partnership, as the general partner of the Partnership (i) under the Loan Agreement, and the other Loan Documents (as defined therein), and (ii) Indebtedness as permitted by the Loan Agreement and the other Loan Documents. For these purposes, the term "Indebtedness" of a person, at a particular date, means the sum (without duplication) at such date of (a) indebtedness or liability for borrowed money; (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any person or entity, or otherwise to assure a creditor against loss; and (g) obligations secured by any mortgage, deed of trust, lien, pledge, hypothecation, assignment, security interest, or any other encumbrance, charge or transfer of, on or affecting the Partnership, the Property (as defined in the Loan Agreement), any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialmen's and other similar liens and encumbrances, whether or not the obligations have been assumed.
- (6) The Corporation will not make any loans or advances to any person and shall not acquire obligations or securities of any Related Party.
- (7) The Corporation 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.
- (8) The Corporation will do all things necessary to observe organizational formalities and preserve its existence, and will not, nor will the Corporation permit any Related Party to, amend, modify or otherwise change material provisions of the Partnership's Certificate of Limited Partnership, Partnership's Limited Partnership Agreement, these Articles of

Incorporation or Bylaws of the Corporation, operating agreement, trust or other organizational documents of the Corporation or such Related Party without the prior written consent of LBHI or its successors or assigns as holders of the Loan.

(9) The Corporation will maintain all of its books, records, financial statements and bank accounts separate from those of any other person and the Corporation's assets will not be listed as assets on the financial statement of any other person. The Corporation will file its own tax returns and will not file a consolidated federal income tax return with any other person. The Corporation shall maintain its books, records, resolutions and agreements as official records.

(10) The Corporation at all times will hold itself out to the public as a legal entity separate and distinct from any other person (including any Affiliate or other Related Party), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct 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.

(11) The Corporation 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.

(12) Neither the Corporation nor any Related Party will seek the dissolution, winding up, liquidation, consolidation or merger in whole or in part, or the sale of material assets of the Corporation.

(13) The Corporation will not commingle its assets with those of any other person and will hold all of its assets in its own name.

(14) Except to the extent it is obligated for the Partnership's obligations in its capacity as general partner, the Corporation will not guarantee or become obligated for the debts of any other person and will not hold itself out as being responsible for the debts or obligations of any other person.

(15) The Corporation shall at all times cause there to be at least two (2) duly appointed members of the Board (each an "Independent Director"), each of whom is a natural person and is not at the time of initial appointment, has not been at any time during the preceding five (5) years and shall not be while serving as an Independent Director: (i) a stockholder, director (other than as an Independent Director), officer, employee, partner, member, attorney or counsel of the Corporation or any Affiliate of it; (ii) a customer, creditor, supplier or other person who derives any of its purchases or revenues from its activities with the Corporation or any Affiliate of it; (iii) a person controlling or under common control with any such stockholder, partner, member, customer, creditor, supplier or other person; or (iv) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, customer, creditor, supplier or other person. An individual that otherwise satisfies the foregoing shall not be disqualified from serving as an Independent Director of the Corporation if such individual is at the time of initial appointment, or at any time while serving as an Independent Director of the Corporation, an Independent Director of a "special purpose entity" affiliated with the Partnership or the Corporation. For purposes of this paragraph a "special purpose entity" is an entity, whose organizational

documents contain restrictions on its activities and impose requirements intended to preserve the Partnership's and the Corporation's separateness that are substantially similar to those of the Partnership or the Corporation, as applicable, and provide, inter alia, that it: (a) is organized for the limited purpose of owning and operating one or more properties, being a General Partner of the Partnership or, in a securitization context, the limited purpose of issuing mortgage or asset-backed securities; (b) has restrictions on its ability to incur indebtedness, dissolve, liquidate, consolidate, merge and/or sell assets; (c) may not file voluntarily a bankruptcy petition on its own behalf or on behalf of the Partnership without the consent of at least one Independent Director and (d) shall conduct itself and cause the Partnership to conduct itself in accordance with certain "separateness covenants", including, but not limited to, the maintenance of its and the Partnership's books, records, bank accounts and assets separate from those of any other person or entity.

(16) The Corporation will not cause or permit the Board to take any action which, under the terms of these Articles of Incorporation, the Corporation's Bylaws or any voting trust agreement with respect to any common stock, requires the unanimous consent of all the directors unless at the time of such action there shall be at least two members each of whom is an Independent Director.

(17) The Corporation will allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate or Related Party.

(18) The Corporation will not pledge its assets for the benefit of any other person other than with respect to the Loan.

(19) The Corporation will maintain a sufficient number of employees in light of its contemplated business operations and pay the salaries of its own employees from its own funds.

(20) The Corporation will conduct its business so that the assumptions made with respect to the Partnership in the Insolvency Opinion (as defined in the Loan Agreement) shall be true and correct in all respects.

(21) The Corporation will pay its own liabilities and expenses only out of its own funds.

(22) The Corporation will not to form, acquire or hold any subsidiary other than its interest in Partnership.

(23) The Corporation shall not permit any transfer after the date of the Loan Agreement of any direct or indirect ownership interest in the Corporation such that the transferee, which was not previously a shareholder of the Corporation, owns, in the aggregate with the ownership interests of its Affiliates and family members in the Corporation, more than a 49% direct or indirect interest in the Corporation, unless (i) such transfer is conditioned upon the delivery of an acceptable non-consolidation opinion to the holder of the Loan and to any applicable rating agency concerning, as applicable, the Corporation, the new transferee and/or their respective owners and (ii) the applicable rating agencies confirm that the transfer will not result in a qualification, withdrawal or downgrade of any securities rating.

(24) The Corporation is required to continue serving in the capacity of a general partner of the Partnership and own at least a 0.5% interest in the Partnership, so long as the Loan is outstanding.

(25) The unanimous consent of all of the directors (including the consent of the two Independent Directors) is required for the Corporation to, and for the Corporation to cause the Partnership to:

- a. File or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding; institute any proceedings under any applicable insolvency law or otherwise seek relief under any laws relating to the relief from debts or the protection of debtors generally;
- b. Seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Corporation or the Partnership or a substantial portion of either of their properties;
- c. Make any assignment for the benefit of the creditors of the Corporation or the Partnership; or
- d. Take any action in furtherance of any of the foregoing.

(26) Notwithstanding anything contrary in these Articles of Incorporation, the Corporation is prohibited from amending the provisions specified in Article 6 or 7 herein without the written consent of LBHI or its successors or assigns as holder of the Loan, or, after the securitization of the Loan only if the Partnership 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 LBHI or such successors or assigns.

ARTICLE 8 Personal Liability of Directors

A director of the Corporation shall not be personally liable for monetary damages for any action taken, or any failure to take any action, unless otherwise required by the Act; provided, however, that the foregoing provision shall not eliminate or limit (1) the responsibility or liability of a director pursuant to any criminal statute, or (2) the liability of a director for the payment of taxes pursuant to local, state or federal law. Any repeal, modification or adoption of any provision inconsistent with this Article 8 shall be prospective only, and neither the repeal or modification of this Article nor the adoption of any provision inconsistent with this Article shall adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such repeal or modification or the adoption of such inconsistent provision.

ARTICLE 9
Indemnification

The Corporation shall, to the fullest extent permitted by the provisions of the Act, indemnify any and all persons whom it shall have power to indemnify under said provisions from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said provisions, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, vote of shareholders or disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

ARTICLE 10
Amendment

Except as provided in paragraphs (8) and (26) of Article 7, the Corporation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation in any manner now or hereafter provided herein or by statute; provided, however, that as long as the Loan remains outstanding (1) the Corporation's Bylaws or any amendment, alteration, change or repeal thereof shall not in any manner impair, nor alter, Articles 6 and 7 (the "Restricted Articles"); and provided further, that the Corporation shall not amend or change any provision of any Article other than the Restricted Articles so as to be inconsistent with the Restricted Articles.

EXECUTED this 6th day of December, 2001.



Ken Bernstein
Incorporator

H010001194959