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845 LINCOLN MANAGING MEMBER CORPORATION

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ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF

845 LINCOLN MANAGING MEMBER CORPORATION

(present name)

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(Document Number of Corporation)

Pursuant to the provisions of section 607.1006, Florida Statutes, this Florida Profit Corporation adopts the following amendment(s) to its Articles of Incorporation:

FIRST: Amendment(s) adopted:

I. Article III is deleted in its entirety and replaced with the following new Article III:

PURPOSE

The nature of the business and of the purposes to be conducted and promoted by the corporation (the "SPE Component Entity"), is to engage solely in the following activities:

- (i) To cause Lincoln 845 LLC (the "Company") to finance/refinance, certain parcels of real property, together with all improvements located thereon, at 842-845 Lincoln Road, Miami Beach, Florida (the "Property");
- (ii) to own no less than a .5% ownership interest in Company and act as the sole managing member of Company;
- (iii) to cause Company to receive a loan (the "Loan") from Wells Fargo Bank, National Association ("Lender"), enter into a Loan Agreement and other documents related to the Loan (the "Loan Documents") with Lender and refinance the subject property in connection with a permitted repayment of the Loan; and
- (iv) to exercise all powers enumerated in the applicable law of Florida necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

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II. The following new Article VIII is added immediately following Article VII. The text of Article VIII in its entirety is as follows:

A. SEPARATENESS COVENANTS

Notwithstanding anything to the contrary contained herein, for so long as the Loan remains outstanding, SPE Component Entity will not:

- (i) engage in any business or activity other than the ownership of its interest in Company, acting as the sole managing member of Company, and activities incidental thereto;
- (ii) acquire or own any assets other than its ownership interest in Company;
- (iii) merge into or consolidate with any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing (each a "Person"), or dissolve, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;
- (iv) fail to observe all organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable law of the jurisdiction of its organization or formation, or amend, modify, terminate or fail to comply with the provisions of its organizational documents;
- (v) own any subsidiary, or make any investment in, any Person, other than its interest in the Company;
- (vi) commingle its assets with the assets of any other Person;
- (vii) incur any indebtedness, except as may be permitted pursuant to the Loan Documents;
- (viii) (a) fail to maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party, (b) list its assets as assets on the financial statement of any other Person; provided, however, that SPE Component Entity's assets may be included in a consolidated financial statement of its affiliates provided that (1) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of SPE Component Entity and such affiliates and to indicate that SPE Component Entity's assets and credit are not available to satisfy the debts and other obligations of such affiliates or any other Person and (2) such assets shall be listed on SPE Component Entity's own separate balance sheet or (c) fail to maintain its books, records, resolutions and agreements as official records;
- (ix) enter into any contract or agreement with any general partner, member, shareholder, principal or affiliate, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;
- (x) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;
- (xi) assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets for the benefit

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of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

- (xii) make any loans or advances to any Person, other than the Company;
- (xiii) fail to file its own tax returns (unless prohibited by applicable law from doing so);
- (xiv) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name or fail to correct any known misunderstanding regarding its separate identity;
- (xv) fail to 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 (to the extent there exists sufficient cash flow from the Property to do so after the payment of all operating expenses and scheduled principal and/or interest payments under the Loan and shall not require any equity owner to make additional capital contributions to SPE Component Entity);
- (xvi) without the unanimous written consent of all of its partners or members, as applicable; and the consent of each Independent Director (regardless of whether such Independent Director is engaged at the Company or SPE Component Entity level), (a) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any creditors rights laws, (b) seek or consent to the appointment of a receiver, liquidator or any similar official, (c) take any action that might cause such entity to become insolvent, or (d) make an assignment for the benefit of creditors;
- (xvii) fail to allocate shared expenses (including, without limitation, shared office space) or fail to use separate stationery, invoices and checks;
- (xviii) intentionally fail to remain solvent, to pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds or fail to maintain a sufficient number of employees in light of its contemplated business operations (in each case to the extent there exists sufficient cash flow from the Property to do so); or
- (xix) acquire obligations or securities of its partners, members, shareholders or other affiliates, as applicable.

B. INDEMNIFICATION

Notwithstanding anything to the contrary contained herein, any indemnification of the SPE Component Entity's directors and officers is hereby fully subordinated to any obligations respecting the Company or the Property (including, without limitation, the Loan and any mortgage or deed of trust securing such Loan (the "Mortgage")) and such indemnification shall not constitute a claim against the SPE Component Entity or the Company in the event that cash flow necessary to pay holders of such obligations is insufficient to pay such obligations.

C. CERTAIN PROHIBITED ACTIVITIES

For so long as the Loan remains outstanding, no amendment of Article III or Article VIII to this certificate of incorporation may be made without first obtaining approval of the Lender, or, after the securitization of the Loan, only if the SPE Component Entity 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 Lender.

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D. INDEPENDENT DIRECTOR

(a) For so long as the Loan remains outstanding, at all times there shall be at least one duly appointed member of the board of directors or managers, as applicable (each, an "Independent Director") reasonably satisfactory to Lender who each shall not have been at the time of each such individual's initial appointment, and shall (I) not have been at any time during the preceding five years, and shall not be at any time while serving as Independent Director, either (i) a shareholder (or other equity owner) of, or an officer, director (other than in its capacity as Independent Director), partner, member or employee of, Company, SPE Component Entity or any of their respective shareholders, partners, members, subsidiaries or affiliates, (ii) a customer of, or supplier to, or other Person who derives any of its purchases or revenues from its activities with, Company, SPE Component Entity or any of their respective shareholders, partners, members, subsidiaries or affiliates, (iii) a Person who controls or is under common control with any such shareholder, officer, director, partner, member, employee supplier, customer or other Person, or (iv) a member of the immediate family of any such shareholder, officer, director, partner, member, employee, supplier, customer or other Person, and (II) be employed by, in good standing with and engaged by Company in connection with, in each case, CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or other, similar company approved by Lender in writing. Each Independent Director at the time of their initial engagement shall have had at least three (3) years prior experience as an independent director to a company or a corporation in the business of owning and operating commercial properties similar in type and quality to the Property.

(b) (I) The board of directors or managers of SPE Component Entity, and the constituent members of such entity (the "Constituent Members") shall not take any action which, under the terms of any organizational documents of SPE Component Entity requires the unanimous vote of (1) the board of directors or managers of SPE Component Entity, or (2) the Constituent Members, unless at the time of such action there shall be at least one Independent Director engaged as provided by the terms hereof; (II) any resignation, removal or replacement of any Independent Director shall not be effective without two (2) Business Days prior written notice to Lender accompanied by evidence that the replacement Independent Director satisfies the applicable terms and conditions hereof and of the applicable organizational documents; (III) to the fullest extent permitted by applicable law and notwithstanding any duty otherwise existing at law or in equity, the Independent Director shall consider only the interests of the Constituent Members and Company and any SPE Component Entity (including Company's and any SPE Component Entity's respective creditors) in acting or otherwise voting on the matters provided for herein and in Company's and SPE Component Entity's organizational documents (which such fiduciary duties to the Constituent Members and Company and any SPE Component Entity (including Company's and any SPE Component Entity's respective creditors), in each case, shall be deemed to apply solely to the extent of their respective economic interests in Company or SPE Component Entity (as applicable) exclusive of (x) all other interests (including, without limitation, all other interests of the Constituent Members), (y) the interests of other affiliates of the Constituent Members, Company and SPE Component Entity and (z) the interests of any group of affiliates of which the Constituent Members, Company or SPE Component Entity is a part); (IV) other than as provided in subsection (III) above, the Independent Director shall not

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have any fiduciary duties to any Constituent Members, any directors of Company or SPE Component Entity or any other Person; (V) the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing under applicable law; and (VI) to the fullest extent permitted by applicable law, an Independent Director shall not be liable to Company, SPE Component Entity, any Constituent Member or any other Person for breach of contract or breach of duties (including fiduciary duties), unless the Independent Director acted in bad faith or engaged in willful misconduct.

SECOND: The date of each amendment(s) adoption: March 11, 2013

THIRD: Effective date if applicable: March 11, 2013

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FOURTH: Adoption of Amendment(s) (CHECK ONE)

The amendment(s) was/were adopted by the shareholders. The number of votes cast for the amendment(s) by the shareholders was/were sufficient for approval.

The amendment(s) was/were approved by the shareholders through voting groups. The following statement must be separately provided for each voting group entitled to vote separately on the amendment(s):


"The number of votes cast for the amendment(s) was/were sufficient for approval by."

(voting group)

The amendment(s) was/were adopted by the board of directors without shareholder action and shareholder action was not required.

The amendment(s) was/were adopted by the incorporators without shareholder action and shareholder action was not required.

Dated MARCH 11, 2013

Signature 

(By a director, president or other officer - If directors or officers have not been selected, by an incorporator - If in the hands of a receiver, trustee, or other court appointed fiduciary by that fiduciary)

David Dushey

Director

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