

Division of Corporations

P03000089371

Florida Department of State  
Division of Corporations  
Public Access System

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.**

((H03000253907 7)))

**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 : GERALD WEINBERG, P.C.  
Account Number : I20030000043  
Phone : (800) 342-9856  
Fax Number : (800) 354-3381

FILED  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA  
03 AUG 14 AM 8:47

**FLORIDA PROFIT CORPORATION OR P.A.**

**PDQ TOPS MANAGEMENT CORP.**

Certificate of Status	0
Certified Copy	0
Page Count	07
Estimated Charge	\$70.00

(H03000253907 7)

FILED  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA  
03 AUG 14 AM 8:47

ARTICLES OF INCORPORATION  
PDQ TOPS MANAGEMENT CORP.

The undersigned incorporator, for the purpose of forming a corporation under the Florida General Corporation Act, hereby adopts the following Articles of Incorporation.

ARTICLE I NAME

The name of the corporation is PDQ TOPS MANAGEMENT CORP.

ARTICLE II NATURE OF BUSINESS

This corporation may engage in or transact any or all lawful activities or business permitted under the laws of the United States, the State of Florida, or any other state, county, territory or nation.

ARTICLE III CAPITAL STOCK

The aggregate number of shares of stock and its par value that this corporation is authorized to have outstanding at any one time is: Two Hundred, (200), all of which shall be without par value.

ARTICLE IV TERMS OF EXISTENCE

This corporation is to exist perpetually.

ARTICLE V PRINCIPAL MAILING ADDRESS

The principal mailing address of the corporation shall be:

1250 E. Hallandale Beach Boulevard  
Suite 904  
Hallandale, Florida 33009

ARTICLE VI INCORPORATOR

The name and street address of the incorporator to this articles of incorporation is:

Lawrence A. Kirsch  
90 State Street  
Albany, New York 12207

(H03000253907 7)

(H03000253907 7)

ARTICLE VII PURPOSES:

1. Special Purpose Entity. The Corporation acknowledges that PDQ Tops, LLC (the "Owner") will acquire the premises known as the Tops Plaza Shopping Center in Irondequoit, New York (the "Premises"). The Corporation is the Managing Member of the Owner. The Corporation is aware of the loan made by Column Financial, Inc. to Irondequoit Partners, LLC in the original amount of \$8,700,000.00 dated as of November 11, 1999 (the "Loan"). The Loan is secured by inter alia a Consolidated, Amended and Restated Mortgage and Security Agreement in the original amount of \$8,700,000.00 dated as of November 11, 1999 made by Irondequoit Partners, LLC to Column Financial, Inc. (the "Mortgage"). Other documents were given in furtherance of the Loan and Mortgage as collateral (the "Loan Documents"). Notwithstanding anything to the contrary contained herein, for so long as the Loan is outstanding in whole or in part, the Corporation will not execute any document or take any action on behalf of the Owner to further encumber the Premises. Furthermore, so long as the Mortgage encumbers the Premises, the Company covenants and agrees that it has not and shall not:

a. engage in any business or activity other than act as the Manager of the Owner on behalf of the ownership, operation and maintenance of the Premises, and activities incidental thereto;

b. have the Owner acquire and have the Corporation own any material assets other than (i) the Premises, and (ii) such incidental personal property as may be necessary for the operation of the Premises;

c. have the Owner or have the Corporation merge into or consolidate with any 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 (the term "Person" shall include an individual, corporation, limited liability company, partnership, trust, unincorporated association, government, governmental authority, and any other entity);

d. have the Owner or have the Corporation fail to observe all organization formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or amend, modify, terminate or fail to comply with the provision of this Articles of Incorporation or similar organizational documents;

e. have the Owner or have the Corporation own any subsidiary or make any investment in, any Person;

f. have the Owner or have the Corporation commingle its

(SPR)languageCorporation-jhenc-11c-OpAgel

(H03000253907 7)

(H03000253907 7)

assets with the assets of any other Person;

g. have the Owner or have the Corporation incur any indebtedness or assume or guaranty any indebtedness other than the Loan and unsecured trade debt incurred in the ordinary course of business which is payable within sixty (60) days of when incurred, provided that the total outstanding amount of such trade debt does not exceed any maximum amount provided in the Loan documents at any one time;

h. have the Owner or have the Corporation fail to maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person;

i. have the Owner amend or cause to be amended its Articles of Organization or its Operating Agreement with respect to changing the sole purpose of the Company or the separateness covenants contained in this Article;

j. have the Owner or have the Corporation take any action that might cause the Owner or the Corporation to become insolvent;

k. have the Owner or have the Corporation 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 thereby maintaining an arm's length relationship with its affiliates and enter into transactions with affiliates only on a commercially reasonable basis;

l. have the Owner or have the Corporation 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;

m. have the Owner or have the Corporation seek the dissolution or winding up in whole, or in part of the Owner or the Corporation;

n. have the Owner or have the Corporation 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 of any other Person or hold out its credit as being available to satisfy the obligations of any

(S:\LanguageCorporation-jhrc-11c-Op\Agc)

(H03000253907 7)

(H03000253907 7)

other Person;

o. have the Owner or have the Corporation make any loans or advances to any Person;

p. have the Owner or have the Corporation fail to file its own tax returns (unless prohibited by applicable laws from doing so);

q. have the Owner or have the Corporation 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;

r. have the Owner or have the Corporation fail to maintain adequate capital for the normal obligations reasonable foreseeable in a business of its size and character and in light of its contemplated business operation;

s. have the Owner or have the Corporation fail to pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds;

t. have the Owner or have the Corporation fail to allocate shared expenses (including, without limitation, shared office space) and to use separate stationery, invoices and checks;

u. have the Owner or have the Corporation acquire obligations or securities of its partners, members, shareholders or affiliates, as applicable;

v. have the Owner or have the Corporation fail to maintain its books, records, resolutions and agreements as official records;

w. have the Owner or have the Corporation pledge its assets for the benefit of any other person or entity, other than in connection with the Loan, Mortgage or Loan Documents;

x. have the Owner or have the Corporation identify its members, shareholders or any affiliates thereof as a division or part of it;

(SPLanguageCorporation-jhrnc-11c-Op/qs)

(H03000253907 7)

H03000253907 7)

y. have the Owner or have the Corporation fail to maintain a sufficient number of employees in light of its contemplated business operation; and

z. have the Owner or have the Corporation agree to enter into or consummate any transaction which would render the Owner or the Corporation unable to furnish any Certification or other evidence required by the Mortgage or Loan Documents.

2. Special Purpose Member. So long as the Loan is outstanding in whole or in part, the Corporation shall insure that it will comply with all of the criteria described in this Certificate of Incorporation.

3. Unanimous Consent. Notwithstanding any other provision set forth in this Certificate of Incorporation, to the contrary, so long as the Loan is outstanding and the Mortgage encumbers the Premises, the Corporation shall insure that the Owner's documents provide that the unanimous consent of all Members including the Corporation as the Managing Member is required for the Owner to take any action with regard to any provision set forth in this Article. Additionally, so long as the Loan and Mortgage encumbers the Premises, the Corporation and on behalf of the Owner, shall have the Owner covenant and agree that neither the Owner or the Corporation will execute any document or agreement or take any action which will permit the Owner to:

a. institute proceedings to be adjudicated bankrupt or insolvent;

b. consent to the institution of bankruptcy or insolvency proceedings against it;

c. file a petition seeking, or consenting to, reorganization or file a petition seeking or consenting to relief under any applicable federal or state law relating to bankruptcy;

d. seek or consent to the appointment of a receiver, liquidator, conservator, assignee, trustee, sequestrator, custodian, or any other similar official of the Company or a substantial part of its properties;

e. make any assignment for the benefit of creditors;

(SPELanguageCorporation-jhrnc-11c-OpVgr)

(03000253907 7)

(03000253907 7)

- f. admit in writing its inability to pay its debts generally as they become due;
- g. otherwise seek relief under any laws relating to the relief from debts or the protection of debtors generally;
- h. take any action in furtherance of any of the preceding actions;
- i. engage in transactions with affiliates except as is permitted, above, in this Article; or
- j. except as otherwise provided in this Certificate of Incorporation amend the organizational documents of the Owner or the Corporation.

4. Solvent Managing Member. If there are one or more Managing Members of the Owner in addition to the Corporation notwithstanding any other provision of this Certificate of Incorporation to the contrary, the Corporation shall take all steps to insure that the Owner shall continue (and not dissolve) for so long as a solvent Managing Member exists.

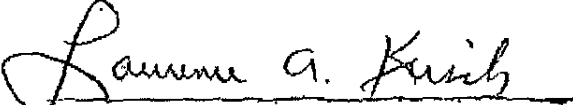
5. Miscellaneous Provisions. Notwithstanding any other provision in this Certificate of Incorporation to the contrary, so long as the Loan is outstanding, the Corporation shall take all steps to insure that no Member of the Owner may transfer any direct or indirect ownership interest in the Owner unless permitted under the Loan Documents.

a. In the event of any inconsistency between the provisions set forth in the Owner's Articles of Organization and this Certificate of Incorporation, the Owner's Articles of Organization shall control.

b. In the event of any inconsistency between the provisions set forth in any By-Law or shareholder's agreement for this Corporation and this Certificate of Incorporation, the provisions set forth in this Certificate of Incorporation shall control.

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation this 14th day of August, 2003.

(H03000253907 7)

  
LAWRENCE A. KIRSCH

(H03000253907 7)

**CERTIFICATE OF DESIGNATION OF  
REGISTERED AGENT/REGISTERED OFFICE**

Pursuant to the provisions of Section 607.0501 or 617.0501, Florida Statutes, the undersigned corporation, organized under the laws of the state of Florida, submits the following statement in designating the registered office/registered agent, in the state of Florida.

1. The name of the Corporation is:

PDQ Tops Management Corp.

2. The name and address of the registered agent and office is:

Daniel Abramson

(Name)


1250 East Hallandale Beach Blvd., Suite 904

(P.O. Box NOT acceptable)

Hallandale, Florida 33009

(City/State/Zip)

*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.*

  
Signature

July 25, 2003

Date

CELE064(2/00)

(H03000253907 7)

FILED  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA  
03 AUG 14 AM 8:47