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FLORIDA PROFIT CORPORATION OR P.A.

BMS Manager, Inc.

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CLERK OF STATE
TALLAHASSEE, FLORIDA

**ARTICLES OF INCORPORATION
OF
BMS MANAGER, INC.**

ARTICLE I - NAME

The name of this corporation is BMS Manager, Inc.

ARTICLE II - PRINCIPAL OFFICE AND MAILING ADDRESS

The principal office and mailing address of this corporation is:

1501 Collins Avenue
Third Floor
Miami Beach, Florida 33139

ARTICLE III - PURPOSE

Subject to Article XII herein, this corporation is organized for the purpose of transacting any or all lawful business.

ARTICLE IV - CAPITAL STOCK

The aggregate number of shares which this corporation shall have authority to issue is One Thousand (1,000) shares of common stock, each share having a par value of \$1.00.

ARTICLE V - INITIAL REGISTERED OFFICE AND AGENT

The street address of the initial registered office of this corporation is:

200 South Biscayne Boulevard
Suite 2500
Miami, Florida 33131;

and the name and address of the initial registered agent of this corporation are:

John C. Sumberg, P.A.
200 South Biscayne Boulevard
Suite 2500
Miami, Florida 33131

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ARTICLE VI -- COMMENCEMENT

This corporation shall commence on the date on which these Articles of Incorporation are filed with the Secretary of State of Florida.

ARTICLE VII -- INITIAL BOARD OF DIRECTORS

The initial Board of Directors of this corporation shall be comprised of five (5) persons. The number of directors may be either increased or decreased from time to time as provided for in the By-laws of the corporation, but shall never be fewer than one.

ARTICLE VIII -- INCORPORATOR

The name and address of the person signing these Articles of Incorporation as incorporator are:

Jean Marc Meunier
1501 Collins Avenue
Third Floor
Miami Beach, Florida 33139

ARTICLE IX -- BY-LAWS

The power to alter, amend or repeal the By-laws of this corporation shall be vested in each of the Board of Directors and the shareholders of this corporation. The shareholders of this corporation may amend or adopt a by-law that fixes a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is required by law.

ARTICLE X -- INDEMNIFICATION

Subject to Article XII herein, this corporation shall indemnify any officer, director or incorporator, or any former officer, director or incorporator, of this corporation to the fullest extent permitted by law.

ARTICLE XI -- AMENDMENT

This corporation reserves the right to amend or repeal any provisions contained in these Articles of Incorporation, or any amendment thereto, and any right conferred upon the shareholders is subject to this reservation.

ARTICLE XII – SPECIAL PURPOSES

A. Notwithstanding anything to the contrary set forth in these Articles of Incorporation, this Article XII shall apply and govern and shall not be amended for so long as that certain mezzanine loan (the "Loan") in the original principal amount of \$13,640,000 made by Carbon Capital, Inc. (the "Lender") to Brickell Main Street Management, Ltd., a Florida limited partnership ("BMS Management"), BMS Investors Group, Ltd., a Florida limited partnership, Cap Ferrat Holdings Ltd., a Florida limited partnership, and Fittipaldi Executive Center I, LLC, a Florida limited liability company (collectively, the "Co-Borrowers"), remains outstanding and not indefeasibly paid in full. When the Loan is no longer outstanding and has been indefeasibly paid in full, Article XII shall no longer remain in effect and shall be null and void; provided, that until such time, this Article XII shall govern over any provision in these Articles of Incorporation.

B. Notwithstanding any other provisions of these Articles of Incorporation to the contrary, the nature of the business and the purposes to be conducted and promoted by the corporation is to (a) own, hold, sell, assign, transfer, pledge and otherwise deal with all or any portion of the membership interest issued by Brickell Main Street, LLC ("BMS") to the corporation (such membership interest, the "Interest"), (b) engage solely in the activity of acting as a special purpose managing member of BMS whose sole purpose is to own the sole general partner interest in BMS Management and (c) do any and all things incident thereto or in connection therewith.

C. Notwithstanding any other provisions of these Articles of Incorporation to the contrary, for so long as the Loan remains outstanding and not indefeasibly paid in full, the corporation shall comply with the following provisions, unless expressly permitted or required otherwise by the Loan Documents (as hereinafter defined) or with the prior approval of the Lender:

- (I) Certain Prohibited Activities. The corporation shall only cause BMS to incur indebtedness in an amount necessary to meet its obligations with respect to the Interest. The corporation shall not, and shall not cause BMS to, incur, assume or guaranty any other indebtedness, except as otherwise permitted under the Loan Documents or with the prior approval of the Lender. The corporation shall not cause BMS to dissolve, liquidate, merge or sell all or substantially all of its assets, or voluntarily commence a case with respect to itself, or cause BMS to 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 the Board of Directors, including the Independent Director (as hereinafter defined). No material amendment may be made to this Article XII or to the corporation's By-laws, without first obtaining the approval of the Lender. Unless otherwise approved by the Lender, the corporation shall pay no dividends or other distributions or cash payments of any

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nature whatsoever to the shareholders of the corporation, or to any affiliate of such shareholders, including, without limitation, the payment of affiliate fees.

- (II) Indemnification. Notwithstanding any other provision of the Articles of Incorporation, any indemnification of this corporation's directors and officers (other than the indemnification of the Independent Director) shall be fully subordinated to any obligations respecting BMS or the Interest (including, without limitation, the Loan) and such indemnification shall not constitute a claim against this corporation or BMS in the event that cash flow in excess of amounts necessary to pay holders of such obligations is insufficient to pay such obligations.
- (III) Separateness Covenants. In order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in these Articles of Incorporation, this corporation shall conduct its affairs in accordance with the following provisions:
- (a) It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its affiliates or, if it shares office space with its affiliates, it shall be allocated, fairly and reasonably, any overhead and expense for shared office space.
 - (b) It shall not own any asset or property other than the Interest and such other property and assets as are incidental to the conduct of the business of the corporation as provided in Paragraph B of this Article XII.
 - (c) It shall not engage, directly or indirectly, in any business other than the business of the corporation as provided in Paragraph B of this Article XII and it shall conduct and operate its business as presently conducted and operated.
 - (d) Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities.
 - (e) The Board of Directors shall include at least one individual who is an Independent Director. An "Independent Director" shall mean a director of this corporation who is not at the time of initial appointment, or at any time while serving as a director of this corporation, and has not been at any time during the preceding five (5) years: (i) a

stockholder, director (with the exception of serving as the Independent Director of this corporation), officer, employee, partner, member, attorney or counsel of BMS, this corporation, or any affiliate of any of them; (ii) a customer, creditor, supplier or other person who derives any of its purchases or revenues from its activities with BMS, this corporation, or any affiliate of any of them; (iii) a person or other entity 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. (As used herein, 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 or entity, whether through ownership of voting securities, by contract or otherwise.) Victoria L. Garrett shall serve as the initial Independent Director of this corporation.

- (f) It shall not enter into any contract or agreement with any affiliate of this corporation or any constituent party of this corporation except upon terms and conditions that are commercially reasonable and substantially similar to those that would be available on an arms-length basis with unrelated third parties.
- (g) It has not incurred and shall not incur any indebtedness and shall not permit BMS to incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (A) trade payables or accrued expenses incurred in the ordinary course of the business of the corporation with trade creditors and in amounts as are normal and reasonable under the circumstances and (B) such reasonable affiliate indebtedness relating to operating expenses of the corporation or BMS incurred in order that the corporation and BMS may each comply with the separateness and other requirements of this Article XII, or of Article 5.3 of the Amended and Restated Articles of Organization of BMS, as the case may be, provided that all such affiliate indebtedness shall at all times be fully subordinate to the Loan. No indebtedness other than the Loan may be secured (subordinate or *pari passu*) by the Interest.
- (h) It has not made and shall not make any loans or advances to any third party including any affiliate of the corporation or

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constituent party of the corporation and shall not acquire obligations or securities of its affiliates other than the Interest.

- (i) It is and shall remain solvent and shall pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets (as hereinafter defined) as the same shall become due.
- (j) It has done or caused to be done and shall do all things necessary to observe organizational formalities and preserve its existence, and it shall not amend, modify or otherwise change these Articles of Incorporation or the By-laws of the corporation without the prior written consent of the Lender.
- (k) It shall maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party and the corporation shall file its own separate tax returns. It shall maintain its books, records, resolutions and agreements as official records.
- (l) It shall be, and at all times shall hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of the corporation or any constituent party of the corporation), 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 separate stationery, invoices and checks.
- (m) It shall 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.
- (n) Neither this corporation nor any constituent party shall seek or permit the dissolution, winding up, liquidation, consolidation or merger in whole or in part, of this corporation, 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.
- (o) It shall not commingle the funds and other assets of this corporation with those of any affiliate or constituent party,

- or any affiliate of any constituent party, or any other person.
- (p) It has and shall maintain its assets in such a manner that it shall 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.
 - (q) It shall not pledge its assets and does not and shall not hold itself out to be responsible for the debts or obligations of any other person.
 - (r) It shall pay any liabilities out of its own funds, including salaries of any employees.
 - (s) The corporation shall maintain a sufficient number of employees in light of its contemplated business operations, or if it shares employees with any affiliate, it shall be allocated, fairly and reasonably, any overhead and expense for such shared employee(s).
 - (t) This corporation shall not guarantee or become obligated for the debts of any other entity or person.
 - (u) This corporation shall not form, acquire or hold any subsidiary other than BMS.
 - (v) This corporation shall cause BMS to comply with the provisions of Regulation 22 of its Regulations.
- (IV) Notwithstanding any other provision herein to the contrary and except as permitted under the Loan, so long as the Loan remains outstanding and not indefeasibly paid in full, no shareholder of the corporation may transfer any direct or indirect ownership interest in the corporation such that the transferee owns more than a forty-nine percent (49%) interest in the corporation (other than a transferee who as of the date hereof owned more than a forty-nine percent (49%) interest in the corporation) unless (a) such transfer is conditioned upon the delivery of an acceptable Non-Consolidation Opinion to the Lender and to any nationally recognized rating agency, if applicable, which has been requested by the Lender or any transferee of the Lender to rate any issue of securities issued in respect of a pool of mortgage loans which include the Loan (collectively, the "Certificates") and which is then rating, or expected to rate, such Certificates (individually, a "Rating Agency"), concerning, as applicable, the corporation, the new transferee and/or their respective owners; and (b) each Rating

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Agency confirms in writing that such transfer will not result in a qualification, withdrawal or downgrade of any securities rating.

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

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

"Loan Documents" means that certain loan agreement entered into by and among the Lender, the Co-Borrowers and certain guarantors of the Loan governing the terms and conditions of the Loan together with such other documents as evidence the Loan and/or are entered into in connection with the Loan.

"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.

[Signature of incorporator on following page.]

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IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation
as incorporator thereof as of the 28th day of October, 2003.


Jean Marc Meunier, Incorporator

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**ACCEPTANCE OF APPOINTMENT
AS REGISTERED AGENT**

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The undersigned, as President and on behalf of John C. Sumberg, P.A., a Florida professional service corporation (the "Corporation"), which has been designated as registered agent for BMS Manager, Inc., a Florida corporation, in the foregoing Articles of Incorporation of BMS Manager, Inc., hereby agrees that the Corporation shall accept service of process for and on behalf of BMS Manager, Inc. and that the Corporation shall comply with any and all laws, including, without limitation, Section 607.0501, Florida Statutes, as amended, relating to the complete and proper performance of the duties and obligations of a registered agent of a Florida corporation.

Dated: October 28, 2003.

John C. Sumberg, P.A., a Florida
professional service corporation

By: _____

John C. Sumberg, President