

P03000122598

Division of Corporations

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FLORIDA DEPARTMENT OF STATE

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October 30, 2003

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SECRETARY OF STATE
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**ARTICLES OF INCORPORATION
OF
FEC MANAGEMENT, INC.
A Florida corporation**

**ARTICLE I
NAME**

The name of this corporation is FEC MANAGEMENT, INC. (the "Corporation") and its mailing address is 1001 Brickell Bay Drive, 9th Floor, Miami, Florida 33131.

**ARTICLE II
NATURE OF BUSINESS**

This Corporation is being formed to exercise its authority as a member of Fintipaldi Executive Center I, LLC and engage in any and all lawful business or activity permitted under the laws of the United States, and the State of Florida that are incident to carrying out properly the objects herein mentioned.

**ARTICLE III
TERM OF EXISTENCE**

This Corporation shall have perpetual existence unless sooner dissolved in accordance with the laws of the State of Florida. The date on which this Corporation's existence shall begin is the date on which these Articles of Incorporation are filed with the Department of State of the State of Florida.

**ARTICLE IV
CAPITAL STOCK**

The total number of shares of stock this Corporation shall have authority to issue is 1,000 shares of Common Stock, \$0.01 par value per share (the "Common Stock").

**ARTICLE V
INITIAL REGISTERED OFFICE AND AGENT**

The street address of the initial registered office of the Corporation is 1200 South Pine Island Road, Plantation, FL 33324, and the name of the initial registered agent of this Corporation at that address is CT Corporation System.

ARTICLE VI INITIAL BOARD OF DIRECTORS

This Corporation shall have two (2) initial directors; *provided however*, that so long as the Loan (as defined in Article IX below) remains outstanding and not indefeasibly paid in full, one (1) director must be an independent director as set forth in Article IX(3)(III)(e). The number of directors may be either increased or diminished from time to time by the Bylaws, but shall never be less than one (1). The address of the initial director of this Corporation is 735 Crandon Boulevard, Lake Villa II #503, Key Biscayne, FL 33149. The name of the director at that address is Emerson Fittipaldi.

ARTICLE VII AMENDMENTS TO ARTICLES OF INCORPORATION AND BYLAWS

The power to adopt, alter, amend or repeal any provisions contained in these Articles of Incorporation or the Bylaws of the Corporation shall be vested in the shareholders of this Corporation.

ARTICLE VIII INDEMNIFICATION

Subject to Article IX(C)(II), this Corporation shall indemnify and may advance expenses to any and all of its directors, officers, employees or agents or former directors, officers, employees or agents or any person or persons who may have served at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise in which it owns shares of capital stock or of which it is a creditor, to the full extent permitted by law. This indemnification shall include, but not be limited to, the expenses, including the cost of any judgments, fines, settlements and counsel's fees, actually and necessarily paid or incurred in connection with any action, suit or proceedings, whether civil, criminal, administrative or investigative, and any appeals thereof, to which any such person or his legal representative may be made a party or may be threatened to be made a party, by reason of his being or having been a director, officer, employee or agent as herein provided. The foregoing right of indemnification shall not be exclusive of any other rights to which any director, officer, employee or agent may be entitled as a matter of law or which he may be lawfully granted.

ARTICLE IX SPECIAL PURPOSES

A. Notwithstanding anything to the contrary set forth in these Articles of Incorporation, this Article IX 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 Investors Group, Ltd., a Florida limited partnership ("BMS Investors"), Fittipaldi Executive Center I, LLC, a Florida limited liability company ("FECE"), and Cap Ferrat

Ltd., a Florida limited partnership (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 IX shall no longer remain in effect and shall be null and void; provided, that until such time, this Article IX 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 FECl to the Corporation (such membership interest, the "Interest"), (b) engage solely in the activity of acting as a special purpose managing member of FECl whose sole purpose is to own a limited partnership interest in Brickell Main Street, LLLP., a Florida limited liability limited partnership ("BMS LLLP"), 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 FECl to incur indebtedness in an amount necessary to meet its obligations with respect to the Interest. The Corporation shall not, and shall not cause FECl 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 FECl to dissolve, liquidate, merge or sell all or substantially all of its assets, or voluntarily commence a case with respect to itself, or cause FECl 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 IX 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 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 FECL or the Interest (including, without limitation, the Loan) and such indemnification shall not constitute a claim against this Corporation or FECL 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 IX.

(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 IX 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 shareholder, director (with the exception of serving as the Independent Director of this Corporation), officer, employee, partner, member, attorney or counsel of FECL, 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 FECL, this Corporation, or any affiliate of any of them; (iii) a person or other entity controlling or under common control with any such shareholder, partner, member, customer, creditor, supplier or other person; or (iv) a member of the immediate family of any such shareholder, 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.) Joan L. Dobrzynski 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 FECL 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 FECL incurred in order that the Corporation and FECL may each comply with the separateness and other requirements of this Article IX, 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 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 FECL.

(v) This Corporation shall cause FECL to comply with the provisions of Article XIII of its Operating Agreement.

(IV) Transfer Restrictions While Mezzanine Loan Outstanding. Notwithstanding any other provision in these Articles of Incorporation to the contrary and except as permitted under the Mezzanine Loan, so long as the Mezzanine Loan is outstanding, 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 loan 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 Company, the new transferee and/or their respective owners; and (b) each Rating 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 IX, 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.

ARTICLE X INCORPORATOR

The name and address of the person signing these Articles of Incorporation is:

Emerson Fittipaldi
735 Crandon Boulevard, Lake Villa, II #503
Key Biscayne, FL 33149

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IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation on this 18 day of October 2003.

By: 
Emerson Fittig

WITNESSETH

TOTAL P.12