

P04000132509

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DIVISION OF CORPORATIONS

BASIC AMENDMENT

ATRIUM-SAN REMO CORP.

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**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
ATRIUM - SAN REMO CORP.**

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The undersigned, being the sole director of ATRIUM - SAN REMO CORP., hereby files these Amended and Restated Articles of Incorporation, which amend and restate the Article of Incorporation which were filed with the Florida Secretary of State on September 21, 2004 as Document No. P04000132509. Stock has not been issued and therefore shareholder approval hereof is not required. The Articles of Incorporation are hereby amended and restated to read as follows:

ARTICLE I

NAME

The name of this corporation shall be ATRIUM - SAN REMO CORP.

ARTICLE II

GENERAL NATURE OF BUSINESS AND POWERS

The sole purpose of the Corporation is to acquire a general partnership interest in and act as the general partner of ATRIUM - SAN REMO ASSOCIATES, LTD., a Florida limited partnership (the "Partnership") which is engaged solely in the activities for which the Partnership was formed as set forth in the Partnership's Agreement of Limited Partnership relating to the real estate project known as The Atrium located in Coral Gables, Florida (the "Property"), pursuant to and in accordance with these Articles of Incorporation and the Partnership's Agreement of Limited Partnership (the "Partnership Agreement"); and to engage in any activity and to exercise any powers

Prepared:

*Linda Ebin, Esquire
825 Brickell Bay Drive, Suite 1648
Miami, Florida 33131-2920
(305) 377-0223
Fl. Bar No.: 0318590*

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permitted to corporations under the laws of the State of Florida that are incident, necessary or appropriate to accomplish the foregoing.

ARTICLE III

CAPITAL STOCK

The maximum number of shares of stock that this Corporation is authorized to issue and have outstanding at any one time is Ten Thousand (10,000) shares of common stock having a par value of One (\$1.00) Dollar per share.

Shares may be issued only for a consideration having a value, in the judgment of the Board of Directors, at least equivalent to the full par value of the stock to be issued. All shares issued shall be fully paid and nonassessable.

ARTICLE IV

TERM OF EXISTENCE

This corporation shall commence its existence on the date of filing of these articles with the Secretary of State of Florida, and shall have perpetual existence.

ARTICLE V

REGISTERED AGENT AND INITIAL REGISTERED OFFICE

The Registered Agent and the street address of the initial Registered Office of this Corporation in the State of Florida shall be:

LINDA EBIN
825 Brickell Bay Drive
Suite 1648
Miami, Florida 33131-2920

The Board of Directors may, from time to time, move the Registered Office to any other address in the State of Florida.

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ARTICLE VI

BOARD OF DIRECTORS

This Corporation shall have One (1) director initially. The number of directors may be increased or diminished from time to time by By-Laws adopted by the stockholders, but shall never be less than one (1).

ARTICLE VII

INITIAL DIRECTOR

The name of the initial director and president of this Corporation and his street address is:

EUGENIO COSCULLUELA, JR.
1450 Madruga Avenue
Coral Gables, FL 33146

The person named as the initial director shall hold office for the first year of existence of this Corporation or until his successors are elected or appointed and have qualified, whichever occurs first.

ARTICLE VIII

PRINCIPAL OFFICE

The principal office of the corporation is as follows:

1450 Madruga Avenue
Coral Gables, FL 33146

ARTICLE IX

CONFLICT OF INTEREST

No contract between this Corporation and another corporation or another individual shall be invalidated by reason of the fact that one or more of the officers or directors of this Corporation are officers or directors of the said other corporation, or by reason of the fact that one or

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more of the officers or directors of this Corporation may be the other individual or individuals contracting with this Corporation.

ARTICLE X

SINGLE PURPOSE PROVISIONS

10.1 Until such time as all obligations of the Partnership secured by the Property pursuant to the terms of the first lien Mortgage (the "Mortgage") held by John Hancock Life Insurance Company ("Hancock") or any subsequent holder *other than* a holder to whom such Mortgage is transferred at the request of the Partnership ("Hancock or its Transferees"), have been paid in full or are no longer held by Hancock or its Transferees, at all times at which the directors of the Corporation shall take, or shall be required to take, any action in such capacity, and the provisions of this Article X shall apply to all actions of the Corporation, and there shall be at least one Independent Director. An "Independent Director" shall mean a director of the Corporation who is not at the time of initial appointment and has not been at any time during the preceding five (5) years and shall not be at any time while serving as Independent Director: (a) a stockholder, director, officer, employee, partner or member of the Corporation or the Partnership or any Affiliate of either of them; (b) a customer, supplier or other person who derives more than 10% of its purchases or revenues from its activities with the Corporation or the Partnership or any Affiliate of either of them; (c) a person or other entity controlling or under common control with any such stockholder, director, officer, employee, partner, member, customer, supplier or other person; or (d) an attorney or counsel to the Corporation, the Partnership or any Affiliate of either of them; or (e) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, customer, 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, and the term "*Affiliate*" shall have the meaning assigned to it in the Partnership Agreement.

10.2 With the consent of the initial stockholders of the Corporation, which consent the initial stockholders believe to be in the best interest of the initial stockholders and the Corporation, no Independent Director shall, with regard to any action to be taken under or in connection with this Article X, owe a fiduciary duty or other obligation to the initial stockholders or to any successor stockholders (except as may specifically be required by the statutory law of any applicable jurisdiction), and every stockholder, including each successor stockholder, shall consent to the foregoing by virtue of such stockholder's purchase of shares of capital stock of the Corporation, no further act or deed of any stockholder being required to evidence such consent. Instead, such director's fiduciary duty and other obligations with regard to such action under or in connection with this Article X shall be owed to the Corporation (including its creditors). In addition, no Independent Director may be removed unless his or her successor has been elected.

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10.3 Notwithstanding any other provision of these Articles of Incorporation and any provision of law that otherwise so empowers the Corporation, as long as any obligation secured by the Mortgage remains outstanding and is held by Hancock or its Transferees and not discharged in full, the Corporation shall not and shall not permit the Partnership, without the unanimous consent of the Board of Directors, including without limitation the Independent Director, to take any Bankruptcy Action. *Bankruptcy Action* means:

- (a) Commencing any case, proceeding or other action on behalf of the Corporation or the Partnership under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors;
- (b) Instituting proceedings to have the Corporation or the Partnership adjudicated as bankrupt or insolvent;
- (c) Consenting to the institution of bankruptcy or insolvency proceedings against the Corporation or the Partnership;
- (d) Filing a petition or consent to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief on behalf of the Corporation of its debts or the Partnership on behalf of its debts under any federal or state law relating to bankruptcy;
- (e) Seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Corporation or a substantial portion of its properties, or the Partnership or a substantial portion of its properties;
- (f) Making any assignment for the benefit of creditors of the Corporation or the Partnership; or
- (g) Taking any action or causing the Partnership to take any action in furtherance of any of the foregoing.

10.4 Notwithstanding any other provision of these Articles of Incorporation and any provision of law that otherwise so empowers the Corporation, as long as any obligation secured by the Mortgage remains outstanding and not discharged in full, the Corporation shall not and shall not permit the Partnership to do any of the following:

- (a) engage in any business or activity other than those set forth in Article II or cause or allow the Partnership to engage in any business or activity other than as set forth in its Partnership Agreement;
- (b) incur any indebtedness or assume or guaranty any indebtedness of any other entity, other than the Mortgage and indebtedness permitted therein and normal trade accounts payable in the ordinary course of business which are related to the purposes set forth in Article II above;
- (c) cause or permit the Partnership to incur any indebtedness or to assume or guaranty any indebtedness of any other entity, other than the Mortgage and indebtedness permitted therein and normal trade accounts payable in the ordinary course of business;

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- (d) dissolve or liquidate, in whole or in part;
- (e) cause or consent to the dissolution or liquidation, in whole or in part, of the Partnership;
- (f) consolidate or merge with or into any other entity or convey or transfer or lease its property and assets substantially as an entirety to any entity;
- (g) cause or permit the Partnership to consolidate or merge with or into any other entity or to convey or transfer or lease its Property and assets substantially as an entirety to any entity;
- (h) enter into any transaction or cause or permit the Partnership to enter into any transaction with an Affiliate of the Corporation or the Partnership, unless such transaction is concluded on an arms length basis and upon commercially reasonable terms;
- (i) amend Articles II, X, XI or XII of these Articles of Incorporation or approve an amendment to Sections 1.2 or Article X of the Partnership Agreement; or
- (j) withdraw as general partner of the Partnership.

10.5 Notwithstanding any other provision of these Articles of Incorporation and any provision of law that otherwise so empowers the Corporation, and as long as any obligations secured by the Mortgage remain outstanding and not paid in full and are held by Hancock or its Transferees, the Corporation shall not transfer or permit to be transferred any direct or indirect ownership interest in the Corporation or the Partnership such that the transferee, including without limitation its Affiliates and Family Members (as defined in the Partnership Agreement) own, in the aggregate, more than a 49% interest in the Corporation unless such transfer is conditioned upon the delivery of a non-consolidation opinion acceptable to the holder of the Mortgage and to any applicable rating agency concerning the Corporation, the Partnership, the new transferee(s) and/or their respective owners (as applicable).

10.6 The Corporation shall in the conduct of its business and operations:

- (a) maintain books and records and bank accounts separate from those of any other person or entity;
- (b) maintain its assets in such a manner that it is not costly or difficult to segregate, identify or ascertain such assets and maintain its bank accounts separate from any other person or entity;
- (c) hold regular Board of Director and stockholder meetings, as appropriate, to conduct the business of the Corporation, and observe all other corporate formalities;
- (d) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity;
- (e) prepare separate tax returns and financial statements, or if part of a consolidated group, then it will be shown as a separate member of such group;

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- (f) allocate and charge fairly and reasonably any expenses associated with services provided by common employees, office space expenses, and other overhead expenses shared with Affiliates and maintain a sufficient number of employees in light of its contemplated business operations;
- (g) transact all business with Affiliates on an arm's-length basis and pursuant to commercially reasonable agreements;
- (h) conduct business in its own name, and use separate stationery, invoices and checks bearing its own name;
- (i) not commingle its assets or funds with those of any other person;
- (j) not assume, guarantee, become obligated for, or pay the debts or obligations of any other person or entity;
- (k) pay its own liabilities and expenses out of its own funds drawn on its own bank account;
- (l) not acquire obligations or securities of its shareholders, the Partnership, Affiliate of the Corporation or the Partnership or any other partners of the Partnership;
- (m) not hold out its credits as available to satisfy the obligations of any other person or entity;
- (n) not pledge its assets for the benefit of any other entity or make any loans or advances to any person or entity;
- (o) not buy or hold evidence of indebtedness issued by any other person or entity (other than cash and investment-grade securities);
- (p) correct any known misunderstanding regarding its separate identity;
- (q) not identify itself as a division of any other person or entity except the Partnership;
- (r) maintain adequate capital in light of its contemplated business operations; and
- (s) maintain all required qualifications to do business in the state in which the Property is located.

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H04000207996 3**ARTICLE XI****Duration of Article X**

11.1 Article X hereof shall be of no force or effect unless the Mortgage in favor of Hancock is recorded in the Public Records of Miami-Dade County, Florida on or before January 30, 2005 or if, prior to such date, the Partnership abandons the transaction intended to result in the closing of the Mortgage in favor of Hancock.

11.2 Article X hereof shall be of no further force or effect from and after such time as the Mortgage has been repaid in full or the promissory note evidencing the obligations secured by the Mortgage is assigned by Hancock or any subsequent assignee at the request of the Corporation or the Partnership in lieu of being canceled.

11.3 An amendment to these Articles of Incorporation of the Corporation, adopted by all the directors of the Corporation, filed with the Florida Secretary of State, stating that the Mortgage has not closed on or before January 30, 2005 or that such transaction has been abandoned or that the Mortgage has been repaid in full or the promissory note evidencing the Mortgage has been assigned by the holder thereof at the request of the Corporation or the Partnership in lieu of being canceled, shall be conclusive as to such facts.

ARTICLE XII**AMENDMENT**

These Articles of Incorporation may be amended in the manner provided by law. Every amendment shall be approved by the Board of Directors, proposed by them to the stockholders, and approved at a stockholders' meeting by at least a majority of the stock entitled to vote thereon, unless all of the directors and all of the stockholders sign a written statement manifesting their intention that a certain amendment of these Articles of Incorporation be made.

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IN WITNESS WHEREOF, the undersigned sole director of the Corporation has executed the foregoing Amended and Restated Articles of Incorporation as of the 13 day of October, 2004

Eugenio Cosculluela, Jr.
Eugenio Cosculluela, Jr.

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**CERTIFICATE DESIGNATING PLACE OF BUSINESS
OR DOMICILE FOR THE SERVICE OF PROCESS WITHIN THIS STATE,
NAMING AGENT UPON WHOM PROCESS MAY BE SERVED**

Pursuant to the provisions of Section 607.0501, Florida

Statutes, the following is submitted, in compliance with said Statutes:

That ATRIUM - SAN REMO CORP., desiring to organize under the laws of the State of Florida, with its principal office at: 1450 Madruga Avenue, Coral Gables, FL 33146, has named LINDA EBIN, located at 825 Brickell Bay Drive, Suite 1648, Miami, FL 33131-2920, as its agent to accept service of process within this state.

ACKNOWLEDGMENT:

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.


LINDA EBIN

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