

04000139730
From: AKERMAN, SENTERFITT & EIDSON, P.A.
3053...
T-249 01/08 Job-...

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.

(((H04000251128 3)))

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) 205-0380

From: Rosa Wong, Paralegal Clerk
Account Name : AKERMAN, SENTERFITT & EIDSON, P.A.
Account Number : 075471001363
Phone : (305) 374-5600
Fax Number : (305) 374-5095

Filing Officer:
Please file the attached Amended and Restated Articles of Incorporation with today's date (12/21/04). Thank you.

FILED
DEC 21 PM 4:55
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

RECEIVED

04 DEC 21 PM 4:46

DIVISION OF CORPORATIONS

BASIC AMENDMENT / Amended & Restated

FISHER ISLAND INVESTMENTS, INC.

Certificate of Status	1
Certified Copy	1
Page Count	07
Estimated Charge	\$52.50

AR

Electronic Filing Menu

Corporate Filing

Public Access Help

FILED
DEC 21 PM 4:55
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

H04000251128 3

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
FISHER ISLAND INVESTMENTS, INC.**

The Articles of Incorporation of Fisher Island Investments, Inc. (the "Corporation"), originally filed with the Secretary of State of Florida on October 8, 2004, are hereby amended and restated in their entirety as follows:

**ARTICLE 1
NAME**

The name of the Corporation shall be:

Fisher Island Investments, Inc.

**ARTICLE 2
DURATION**

The Corporation is to exist perpetually.

**ARTICLE 3
PURPOSE**

Subject to Article 7 hereof, the purposes of the Corporation shall be to (i) own membership interests of Fisher Island Holdings, LLC (the "Company"), (ii) serve as the managing member of the Company, and (iii) to transact any and all lawful business that is incident, necessary and appropriate for the foregoing.

**ARTICLE 4
CAPITAL STOCK**

The total number of shares of capital stock which the Corporation shall have the authority to issue is 1,000 shares of common stock, \$1.00 par value per share.

**ARTICLE 5
ADDRESS**

The principal place of business of the Corporation shall be at One Fisher Island Drive, Fisher Island, Florida 33109, or at such other place as may be designated by the Board of Directors from time to time.

**ARTICLE 6
INDEMNIFICATION**

The Corporation shall indemnify the directors, officers, employees or agents of the Corporation exercising powers and duties in such capacities, to the full extent now or hereafter permitted by law, and as further set forth in the By-laws of the Corporation.

H04000251128 3

{M2190210;2}

H04000251128 3

Any indemnification shall be fully subordinated to any obligations respecting the Loan and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations.

ARTICLE 7 SPECIAL PURPOSE ENTITY PROVISIONS

(a) General. The provisions of this Article 7 shall apply only until such date on which the obligations of the Company and its Affiliates under the Loan Documents (as defined below) are indefeasibly and fully satisfied.

(b) Purposes. Notwithstanding anything to the contrary contained in these Amended and Restated Articles of Incorporation (the "Articles"), until the date on which all of the obligations of the Company and its Affiliates under the Loan Documents are indefeasibly and fully satisfied, the sole and exclusive purpose of the Corporation is to engage in the following business activities:

- (1) To own membership interests of the Company;
- (2) To serve as the managing member of the Company;
- (3) To execute, deliver and perform any and all agreements, certificates, instruments and documents as may be necessary or convenient or otherwise required by MM/FI Credit Holdings, LLC ("Junior Lender"), in connection with a loan obtained by the Company from Junior Lender (collectively, the "Junior Loan Documents") pursuant to a Credit Agreement between Company and Junior Lender, which loan shall be evidenced by a Promissory Note and secured, inter alia, by a Pledge Agreement (which pledge shall include a pledge of all of the Corporation's membership interests in the Company), an Environmental Indemnity Agreement, a Mortgage and Security Agreement and a Guaranty Agreement;
- (4) To execute, deliver and perform any and all agreements, certificates, documents and instruments as may be necessary or convenient or otherwise required by Fortress Credit Corp. ("Senior Lender" and, together with Junior Lender, "Lenders") (collectively, the "Senior Loan Documents" and, together with the Junior Loan Documents, the "Loan Documents") in connection with a loan obtained by the Company from Senior Lender;
- (5) To authorize the Company to execute, deliver and perform any and all agreements or obligations related to the acquisition, development, construction, ownership, operation or management of, and the sale and conveyance of condominium units in, that certain real property located on Fisher Island, Florida more particularly described in the Loan Documents, as permitted by the Loan Documents;
- (6) To issue shares of capital stock provided for herein;
- (7) To take any and all other action necessary to maintain the existence of the Corporation as an entity in good standing under the laws of the State of

H04000251128 3

{M2190210;2}

H04000251128 3

Florida and/or to qualify the Corporation to do business as a foreign entity in any state in which such qualification, in the opinion of the Board of Directors of the Corporation, is required to accomplish the permitted activities of the Company set forth herein; and

(8) To engage in any lawful acts or activities and to exercise any powers permitted to corporations organized under the laws of the State of Florida, provided that any such act, activity or power is related or incidental to and necessary, appropriate or convenient for the accomplishment of the foregoing purposes.

(c) Restrictions on Actions. Notwithstanding any other provision of the Articles or any provision of law that otherwise so empowers the Corporation to the contrary, until the date on which all obligations of the Company and its Affiliates under the loans evidenced by the Loan Documents (collectively, the "Loan") are indefeasibly and fully satisfied, the Corporation shall not do any of the following:

(1) engage in any business or activity other than those set forth in Article 7.2 above;

(2) incur any indebtedness (including, but not limited to, loans from shareholders), or assume or guaranty any indebtedness of any other entity other than under the Loan Documents;

(3) (i) dissolve (to the fullest extent permitted by law) or liquidate, in whole or in part, or (ii) consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity, unless (i) the entity (if other than the Corporation) formed or surviving such consolidation or merger or that acquired by conveyance or transfer of the properties and assets of the Corporation substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article 7, and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by the Corporation and be continuing;

(4) acquire all, or substantially all, of the assets or capital stock or other ownership interest of any limited liability company, limited partnership, corporation or other entity; or

(5) authorize the amendment of the Articles except to the extent permitted under the Loan Documents.

(d) Insolvency Proceedings. Notwithstanding anything to the contrary contained in the Articles, until the date on which all of the obligations of the Company and its Affiliates under the Loan Documents are indefeasibly and fully satisfied, the Corporation will not voluntarily institute proceedings to be adjudicated bankrupt or insolvent, consent to the institution of bankruptcy or insolvency proceedings against it, or file, or consent to, a petition seeking reorganization or relief under any applicable federal

H04000251128 3

(M2190210;2)

804000251128 3

or state law relating to bankruptcy or insolvency, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Corporation or any substantial part of its assets, or make an assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or take corporate action in furtherance of any such action without the affirmative vote of the Independent Director (as defined below).

(e) Restriction on Distributions. Notwithstanding anything to the contrary contained in the Articles, until the date on which all of the obligations of the Company and its Affiliates under the Loan Documents are indefeasibly and fully satisfied, the Corporation shall not make any distribution to any shareholder of the Corporation or to any other Person.

(f) Selected Definitions. For purposes of the Articles, "Affiliate" shall mean (a) any Person controlling, controlled by or under common control with another Person; (b) a Person owning or controlling 5% or more of the outstanding voting securities of such other Person; (c) any officer, director, member or partner of such other Person; (d) if such other Person is an officer, director, member or partner, any Company for which such Person acts in any capacity; (e) any person who has a familial relationship, by blood, marriage or otherwise with any partner or employee of the Corporation, or any affiliate thereof; and (f) any person which receives compensation for administrative, legal or accounting services from the Company, or any affiliate. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through ownership of voting securities, by contract or otherwise. As used herein, the term "Person" means an individual or a corporation, partnership, trust, unincorporated organization, limited liability company, association or other entity.

(g) Reservation of Right to Amend Articles of Incorporation. Notwithstanding anything to the contrary contained in the Articles, until the date on which all obligations of the Company under the Loan Documents are indefeasibly and fully satisfied, the Corporation shall not amend, alter, change or repeal any of the provisions of this Article 7. Subject to the limitation of Article 7(b)(7), and the foregoing limitations of this Article 7, the Board of Directors and the shareholders of the Corporation reserve the right to amend, alter, change or repeal any provisions contained in the Articles in the manner now or hereafter prescribed by law, and all the provisions of the Articles and all rights and powers conferred in the Articles on shareholders, are subject to this reserved power.

(h) Special Purpose Bankruptcy Remote Entity. Notwithstanding anything to the contrary contained in the Articles, until the date on which all obligations of the Company and its Affiliates under the Loan Documents are indefeasibly and fully satisfied, the Corporation shall at all times be a Single Purpose Entity (as defined in the Senior Loan Documents), and (i) is and will remain solvent and is maintaining and will 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, (ii) has not and will not fail to correct any known misunderstanding regarding the separate identity of

804000251128 3

E04000251128 3

such entity, (iii) has maintained and will maintain its accounts, books and records separate from any other Person and will file its own tax returns, (iv) has maintained and will maintain its books, records, resolutions and agreements as official records, (v) has not and will not commingle its funds or assets with those of any other Person, (vi) has held and will hold its assets in its own name, (vii) has conducted and will conduct its business in its name, (viii) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person, (ix) has paid and will pay its own liabilities, including the salaries of its own employees, out of its own funds and assets, (x) has observed and will observe all partnership, corporate or limited liability company formalities, as applicable, (xi) has maintained and will maintain an arm's-length relationship with its Affiliates, (xii) has no indebtedness, (xiii) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except for the Loan and the liabilities permitted pursuant to this Agreement, (xiv) has not and will not acquire obligations or securities of its partners, members or shareholders, (xv) has allocated and will allocate fairly and reasonably any overhead for shared office space and uses separate stationery, invoices and checks, (xvi) except in connection with the Loan has not and will not pledge its assets for the benefit of any other Person, (xvii) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person, (xviii) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person, (xix) has not made and will not make loans to any Person, (xx) has not and will not identify its partners, members or shareholders, or any Affiliate of any of them, as a division or part of it, (xxi) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party, and (xxii) shall at all times maintain at least one (1) Independent Director. "Independent Director" shall mean an individual who shall not have been at the time of such individual's appointment, and may not have been at any time (i) a partner, member, shareholder of, or an officer or employee of, the Corporation or any of its partners, members, shareholders, subsidiaries or affiliates, (ii) a customer of, or supplier to, the Corporation or any of its partners, members, shareholders, subsidiaries or affiliates, (iii) a person controlling any such partner, member, shareholder, supplier or customer, or (iv) a member of the immediate family of any such shareholder, officer, employee, supplier or customer of any other director of the Corporation.

(i) Dissolution. Notwithstanding anything to the contrary contained in this the Articles, until the date on which all obligations of the Company and its Affiliates under the Loan Documents are indefeasibly and fully satisfied, the Corporation shall not, to the fullest extent permitted by law, sell, exchange, transfer or otherwise seek to liquidate or dispose of its assets, its interest in any assets or any other asset which is subject to a lien in favor of the Lender without the Lenders' prior written consent pursuant to the Loan Documents.

H04000251128 3

H04000251128 3

These Amended and Restated Articles of Incorporation have been duly adopted and declared advisable by the Board of Directors of the Corporation and by written consent of the shareholders representing a majority of the shares of common stock of the Corporation represented at the meeting and entitled to vote on the subject matter (which was sufficient for approval) and all of the Board of Directors, in lieu of meeting, each dated December 20, 2004.

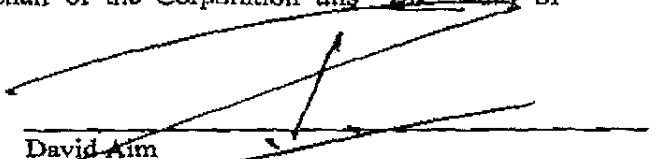
These Amended and Restated Articles of Incorporation shall be effective immediately upon the filing of same with the Florida Department of State and shall supersede the original Articles of Incorporation as filed with the Florida Secretary of State's Office on October 8, 2004.

[The remainder of this page is left blank intentionally.]

H04000251128 3

H04000251128 3

IN WITNESS WHEREOF, the undersigned have executed these Amended and Restated Articles of Incorporation on behalf of the Corporation this 20th day of December, 2004.



David Aim
President

H04000251128 3