

FEB-04-05 FRI 03:58 PM

FIELDSTONE LESTER

FAX NO. (305) 357-1000

P. 01

Division of Corporations

Page 1

P05000013509

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.

((H05000030351 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:

Account Name : FIELDSTONE LESTER SHEAR & DENBERG  
Account Number : I19990000180  
Phone : (305) 357-5775  
Fax Number : (305) 357-5534

RECEIVED  
05 FEB -4 PM 3:58  
DIVISION OF CORPORATIONS

BASIC AMENDMENT

CORAL CLUB MEZZ MANAGING MEMBER CORP.

Certificate of Status	0
Certified Copy	1
Page Count	07
Estimated Charge	\$43.75

Electronic Filing Menu

Corporate Filing

Public Access Help

\*00500, 00579, 00672

(((H0500003Q351 3)))

## AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

## CORAL CLUB MEZZ MANAGING MEMBER CORP.

## ARTICLE I - NAME

The name of this corporation is: Coral Club Mezz Managing Member Corp.

## ARTICLE II - PURPOSE

The business of the Corporation shall be solely to own a membership interest in and be the managing member of Coral Club Mezz, LLC, a Florida limited liability company ("Coral Club Mezz"), and to do all things necessary or incidental to the foregoing to carry out and further the business of the Corporation.

## ARTICLE III - CAPITAL STOCK

The capital stock authorized, the par value thereof, and the class of such stock shall be as follows:

Number of Shares Authorized	Par Value Per Share	Class of Stock
1,000	\$1.00	Common

## ARTICLE IV - PREEMPTIVE RIGHTS

Every shareholder, upon the sale for cash of any new stock of this corporation of the same kind, class or series as that which he already holds, shall have the right to purchase his prorata share thereof (as nearly as may be done without issuance of fractional shares) at the price at which it is offered to others.

ARTICLE V - INITIAL REGISTERED  
OFFICE AND AGENT

The street address of the initial principal and mailing office of this corporation is:

1401 Ponce De Leon Boulevard, Suite 401  
Coral Gables, Florida 33134

(((H0500003Q351 3)))

(((H05000030351:3)))

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

Armando Bucelo  
1401 Ponce De Leon Boulevard, Suite 401  
Coral Gables, Florida 33134

#### ARTICLE VI - COMMENCEMENT

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

#### ARTICLE VII - INITIAL BOARD OF DIRECTORS

This corporation shall have three directors initially. The names and addresses of the initial directors of this corporation are:

Name	Address
Armando Bucelo	1401 Ponce De Leon Boulevard, Suite 401 Coral Gables, Florida 33134
Alfredo Socorro	11780 SW 89 Streets, Suite 300 Miami, Florida 33186
Mary Stawikey (Independent Director (defined below))	c/o CSC-Entity Services LLC 103 Foulk Road, Suite 200 Wilmington, Delaware 19803

At all times while any of the Outstanding Loan Obligations (defined below) remain outstanding and for a period of three hundred sixty-six (366) days thereafter, at least one member of the board of directors of the Corporation shall be an Independent Director, whose vote will be required in connection with any Major Decision. In the event of the death, incapacity, resignation or removal of any Independent Director, the board of directors of the Corporation shall immediately replace such Independent Director with another Independent Director. No actions of the board of directors or of the Corporation that requires the consent of the Independent Director shall be taken in absence of an Independent Director. "Outstanding Loan Obligations" shall have the meaning given such term in the Mezzanine Loan Agreement, dated February 2005, between Hudson Debt Fund I LLC ("Lender") and Coral Club Mezz ("Mezzanine Loan Agreement"). "Independent Director" shall mean a natural person who is a duly appointed member of the board of directors of the Corporation who is Independent and shall not have been, at the time of such appointment, at any time after appointment, or at any time in the preceding five (5) years, (a) a direct or indirect legal or beneficial owner in such Person or

(((H05000030351:3)))

(((H05000030351 3)))

any of its Affiliates, (b) a creditor, customer, supplier, employee, officer, director, manager, member, partner, shareholder, family member, counsel, accountant, advisor, consultant, agent or contractor of such Person or any of its Affiliates, or (c) a natural person who controls (whether directly, indirectly, or otherwise) such Person or any of its Affiliates or any creditor, supplier, employee, officer, director, manager or contractor of such Person or any of its Affiliates. "Independent" shall mean a Person who: (a) does not have any direct financial interest or any material indirect financial interest in the Corporation or in any of its Affiliates, (b) is not connected with such entity or in any of its Affiliates as an officer, employee, promoter, underwriter, trustee, partner, member, manager, creditor, director or Person performing similar functions, and (c) is not a member of the immediate family of an entity or Person defined in clause (a) or clause (b) above. "Person" shall mean any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other person or entity, and any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing. "Affiliate" shall mean any other person or entity controlling, controlled by or under common Control with the Corporation. "Control" shall mean the power to direct the management and policies of a Person, directly or indirectly, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise; and the terms "controls", "controlling" and "controlled" have the meanings correlative to the foregoing. "Major Decision" shall mean any decision of or on behalf of Coral Club, LLC, a Florida limited liability company ("Coral Club"), or Coral Club Mezz to: (a) engage in any business or activity other than as set forth in Coral Club's or Coral Club Mezz' organizational documents in effect as of the date of the Mezzanine Loan Agreement; (b) incur any Obligations or assume or guaranty any Obligations of any other Person, other than in connection with any business or activity as set forth in Coral Club's or Coral Club Mezz' organizational documents in effect as of the date of the Mezzanine Loan Agreement; (c) voluntarily dissolve or liquidate, in whole or in part; (d) consolidate or merge with or into any other Person or convey or transfer its properties and assets substantially as an entirety to any other Person other than as set forth in Coral Club's or Coral Club Mezz' organizational documents in effect as of the date of the date of the Mezzanine Loan Agreement; (e) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, including, but not limited to, the Bankruptcy Code (as defined in the Mezzanine Loan Agreement), or seek the appointment of a trustee, receiver, liquidator, custodian, examiner or other similar official of it or any substantial part of its property, or consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or make a general assignment for the benefit of creditors, or fail generally to pay its debts as they become due, or take any action to authorize any of the foregoing; or (f) amend Coral Club or Coral Club Mezz' organizational documents. "Obligations" shall mean (a) indebtedness or liability for borrowed money, (b) obligations evidenced by bonds, debentures, notes, or other similar instruments, (c) obligations for the deferred purchase price of property or services (including trade obligations), (d) obligations under letters of credit, or (e) obligations under any guaranties, endorsements (other than for collection or deposit in the ordinary course of business) or other contingent obligations.

(((H05000030351 3)))

Notwithstanding any other provision of these Articles of Incorporation or any contrary or inconsistent provision of the By-Laws of the Corporation or any other document or instrument governing the affairs of the Corporation, or any provision of law that otherwise so empowers the Corporation, no Independent Director may be removed unless his or her successor has been elected. No Independent Director shall, with regard to any action to be taken under or in connection with this SEVENTH Article, owe a fiduciary duty or other obligation to the initial stockholder nor to any successor stockholders (except as may specifically be required by the statutory law of any applicable jurisdiction). Instead, such Independent Director's fiduciary duty and other obligations with regard to such action under or in connection with this SEVENTH Article shall be owed to the Corporation (including its creditors). In furtherance and not in limitation of the powers conferred by statute, the board of directors of the Corporation is expressly authorized to adopt, amend or repeal the By-Laws of the Corporation. Election of directors need not be by written ballot unless the By-Laws so provide.

#### ARTICLE VIII-BANKRUPTCY FILING LIMITATION

Notwithstanding any other provision of these Articles of Incorporation or, to the extent permitted by law, any provision of law that otherwise so empowers the Corporation, at all times while any of the Outstanding Loan Obligations remain outstanding and for a period of three hundred sixty-six (366) days thereafter, the Corporation shall not, without the unanimous written consent of the Corporation's board of directors (including its Independent Director), file or consent to the filing of a petition for bankruptcy, reorganization, assignment for the benefit of creditors or similar proceeding under any federal or state bankruptcy, insolvency, reorganization or similar law with respect to itself, Coral Club or Coral Club Mezz.

#### ARTICLE IX-LIMITATIONS ON CORPORATE ACTIVITY

At all times while any of the Outstanding Loan Obligations remain outstanding and for a period of three hundred sixty-six (366) days thereafter, the board of directors shall cause the Corporation to:

(a) not enter into any transaction of acquisition, merger, consolidation or amalgamation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), create any subsidiaries, or acquire by purchase or otherwise all or substantially all the business or assets of, or stock or other evidences of beneficial ownership of, or make any investment in, any Person, or make any material change in its present method of conducting business or amend the terms of its organizational documents;

(b) except in the ordinary course of its capacity as managing member of Coral Club Mezz, not guarantee or otherwise hold out its credit as being available to satisfy obligations of any other Person except to the extent so expressly provided in the Mezzanine Loan Documents (as such term is defined in the Mezzanine Loan Agreement);

(c) not engage in any business unrelated to acting as the member of Coral Club Mezz;

(d) not enter into any contract or agreement with any member, partner, principal, shareholder or Affiliate of Coral Club, Coral Club Mezz or the Corporation, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with unrelated third parties;

(e) comply with any limitations contained in Section 4.1.10 of the Mezzanine Loan Agreement;

(f) not incur any Obligations or material liabilities, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Obligations permitted under Section 4.1.10 of the Mezzanine Loan Agreement; provided, however, that no such Obligations or liabilities (other than the Senior Loan (as defined in the Mezzanine Loan Agreement)) may be secured (senior, subordinate or pari passu) by the Property (as defined in the Mezzanine Loan Agreement) or any portion thereof, and no such Obligations or liabilities (other than the Mezzanine Loan (as defined in the Mezzanine Loan Agreement)) may be secured (senior, subordinate or pari passu) by the Collateral (as defined in the Mezzanine Loan Agreement) or any portion thereof, except as expressly permitted in said Section 4.1.10 of the Mezzanine Loan Agreement;

(g) not make any loans or advances to any third party (including any Affiliate of Coral Club, Coral Club Mezz or the Corporation) or pledge its assets for the benefit of any third party (including any Affiliate of Coral Club, Coral Club Mezz or the Corporation), except as required by the Mezzanine Loan Documents and the Senior Loan Documents (as defined in the Mezzanine Loan Agreement);

(h) be solvent and pay its debts and liabilities (including employment and overhead expenses) from its own assets as the same shall become due;

(i) maintain its own separate books and records and bank accounts, separate and apart from those of any other Person;

(j) at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate), maintain and utilize separate stationery, invoices and checks, otherwise conduct its business and own its assets in its own name, and correct any known misunderstanding regarding its separate identity;

(k) maintain separate financial statements and file its own tax returns;

(l) 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;

(m) not seek the dissolution or winding up, in whole or in part, of Coral Club, Coral Club Mezz or the Corporation;

(n) not commingle its funds or other assets with those of any Affiliate or other Person;

(o) maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or any other Person;

(p) maintain a reasonable number of employees in light of its contemplated business operations and pay the salaries of its employees, and not do any act which would make it impossible to carry on the ordinary business of Coral Club or Coral Club Mezz;

(q) observe all corporate formalities;

(r) not acquire the obligations or securities of any of its shareholders

(s) allocate fairly and reasonably any overhead for any office space which it shares with any other entity;

(t) comply with each of the representations, warranties, and covenants contained in Section 5.1.6 of the Mezzanine Loan Agreement;

(u) cause Coral Club Mezz to comply with the special purpose provisions of its limited liability company agreement as well as the single purpose provisions of the Mezzanine Loan Agreement; and

(v) cause Coral Club Mezz to cause Coral Club to comply with the special purpose provisions of its limited liability company agreement as well as the single purpose provisions of the Mezzanine Loan Agreement.

#### ARTICLE X - INCORPORATOR

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

Armando Buccio  
1401 Ponce De Leon Boulevard, Suite 401  
Coral Gables, Florida 33134

#### ARTICLE XI - BY-LAWS

The power to alter, amend or repeal By-Laws shall be vested in the Board of Directors and the shareholders.

(((H05000030351 3)))

## ARTICLE XII - INDEMNIFICATION

Notwithstanding anything to the contrary in the Articles of Incorporation, the By-Laws or any other documents governing the formation or operation of the Corporation, at all times while any of the Outstanding Loan Obligations remain outstanding and for a period of three hundred sixty-six (366) days thereafter, any indemnification permitted or required under the Articles of Incorporation or the By-Laws of the Corporation shall be fully subordinated to the Outstanding Loan Obligations and will not constitute a claim against the Corporation in the event that cash flow in excess of the amount required to pay the Outstanding Loan Obligations is insufficient to pay such obligation.

## ARTICLE XIII - AMENDMENT

At all times while any of the Outstanding Loan Obligations remain outstanding and for a period of three hundred sixty-six (366) days thereafter, the Corporation will not amend the terms of its Articles of Incorporation and By-Laws, nor shall any such amendment, alteration, change or repeal be effected in violation of any agreement the Corporation shall have entered into prohibiting such amendment. Subject to the foregoing limitation, 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.

IN WITNESS WHEREOF, the undersigned subscriber has executed these Amended and Restated Articles of Incorporation this \_\_\_\_ day of February, 2005.

Coral Club Mezz Managing Member Corp.

By: 

Armando Buccolo, Incorporator