

P06000010592

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TALLAHASSEE FLORIDA

*Amend Rest.*

G. Coulllette FEB 23 2006

FILINGS, INC. TERESA ROMAN

(Requestor's Name)

2805 LITTLE DEAL ROAD

(Address)

TALLAHASSEE, FLORIDA 32308

385-6735

(City, State, Zip)

(Phone #)

OFFICE USE ONLY

**CORPORATION NAME(S) & DOCUMENT NUMBER(S) (if known):**

1. OLD ALABAMA 11 MANAGER CORP  
(Corporation Name) (Document #)
2. \_\_\_\_\_  
(Corporation Name) (Document #)
3. \_\_\_\_\_  
(Corporation Name) (Document #)
4. \_\_\_\_\_  
(Corporation Name) (Document #)

☒ Walk in ☐ Pick up time \_\_\_\_\_

☒ Certified Copy Article 5

☐ Mail out ☐ Will wait ☐ Photocopy

☐ Certificate of Status

NEW FILINGS	
<input type="checkbox"/>	Profit
<input type="checkbox"/>	NonProfit
<input type="checkbox"/>	Limited Liability
<input type="checkbox"/>	Domestication
<input type="checkbox"/>	Other

AMENDMENTS	
<input checked="" type="checkbox"/>	Amendment
<input type="checkbox"/>	Resignation of R.A., Officer/Director
<input type="checkbox"/>	Change of Registered Agent
<input type="checkbox"/>	Dissolution/Withdrawal
<input type="checkbox"/>	Merger

OTHER FILINGS	
<input type="checkbox"/>	Annual Report
<input type="checkbox"/>	Fictitious Name
<input type="checkbox"/>	Name Reservation

REGISTRATION/ QUALIFICATION	
<input type="checkbox"/>	Foreign
<input type="checkbox"/>	Limited Partnership
<input type="checkbox"/>	Reinstatement
<input type="checkbox"/>	Trademark
<input type="checkbox"/>	Other

Examiner's Initials



FLORIDA DEPARTMENT OF STATE  
Division of Corporations

February 22, 2006

FILINGS, INC.

TALLAHASSEE, FL

SUBJECT: OLD ALABAMA II MANAGER CORP.  
Ref. Number: P06000010592

We have received your document for OLD ALABAMA II MANAGER CORP. and check(s) totaling \$52.50. However, the enclosed document has not been filed and is being returned to you for the following reason(s):

The amendment must be adopted in one of the following manners:

**(1) If an amendment was approved by the shareholders, one of the following statements must be contained in the document.**

(a) A statement that the number of votes cast for the amendment by the shareholders was sufficient for approval, -or-

(b) If more than one voting group was entitled to vote on the amendment, a statement designating each voting group entitled to vote separately on the amendment and a statement that the number of votes cast for the amendment by the shareholders in each voting group was sufficient for approval by that voting group.

**(2) If an amendment was adopted by the incorporators or board of directors without shareholder action.**

(a) A statement that the amendment was adopted by either the incorporators or board of directors and that shareholder action was not required.

The date of adoption/authorization of this document must be a date on or prior to submitting the document to this office, and this date must be specifically stated in the document. If you wish to have a future effective date, you must include the date of adoption/authorization and the effective date. The date of adoption/authorization is the date the document was approved.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6903.

Cheryl Coulliette

06 FEB 22 PM 4:36

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Document Specialist

Letter Number: 606A00012544

AMENDED AND RESTATED  
ARTICLES OF INCORPORATION

OF

OLD ALABAMA II MANAGER CORP.

---

ARTICLE I

NAME

The name of this Corporation is Old Alabama II Manager Corp.

ARTICLE II

DURATION

This Corporation shall have perpetual existence commencing upon filing of these Articles.

ARTICLE III

BUSINESS AND PURPOSE

Notwithstanding any other provision of this Certificate of Incorporation, the nature of the business and of the purposes to be conducted and promoted by Old Alabama II Manager Corp. (the "Corporation") is to engage solely in the activity of acting as Managing Member of Old Alabama Phase II, LLC (the "Company"), whose purpose is to own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with certain parcels of real property, together with all improvements located thereon, in the City of Alpharetta, State of Georgia (the "Property"). The corporation shall exercise all powers enumerated in the General Corporation Law of State of Florida necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

Notwithstanding any other provision of this Certificate of Incorporation, the Corporation shall only cause the Company to incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as that certain first mortgage lien exists in favor of Deutsche Banc Mortgage Capital, L.L.C., its successors and/or assigns (the "First Mortgage") on any portion of the Property and the Company owns the Property, the Corporation shall not and shall not cause the Company to incur, assume, or guaranty any other indebtedness. For so long as the Company remains mortgagor of the Property and the Company owns the Property, the Corporation shall not cause the Company to dissolve, liquidate, merge or sell substantially all of its assets. For so long as a mortgage lien exists on any portion of the Property and the Company owns the Property, the Corporation shall not voluntarily commence a case with respect to itself or cause the Company to voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or

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TALLAHASSEE, FLORIDA

any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on any portion of the Property and the Company owns the Property, no material amendment, including this Section or amendments inconsistent with such sections, to this Certificate of Incorporation or to the Corporation's By-Laws may be made without first obtaining approval of the mortgagees holding first mortgages on any portion of the Property, or, after the securitization of the Loan, only if the Company receives (i) confirmation from each of the applicable rating agencies that such amendment would not result in the qualification, withdrawal or downgrade of any securities rating and (ii) approval of such amendment by the mortgagee holding the First Mortgage.

No transfer of any direct or indirect ownership interest in the Corporation may be made such that the transferee owns, in the aggregate with the ownership interests of its affiliates and family members in the Corporation, more than a forty-nine percent (49%) interest in the Corporation (or such other interest as specified in the Commitment Letter or by a rating agency), unless (i) such transfer is conditioned upon the delivery of an acceptable non-consolidation opinion to the mortgagee holding the First Mortgage and to any applicable rating agency concerning, as applicable, the Corporation, the new transferee and/or their respective owners and (ii) the applicable rating agencies confirm that the transfer will not result in a qualification, withdrawal or downgrade of any securities rating.

#### ARTICLE IV

#### INDEMNIFICATION

This Corporation shall indemnify any officer or director, or any former officer or director, to the full extent permitted by law, provided, however, notwithstanding any other provision of this Certificate of Incorporation, any indemnification of the Corporation's directors and officers shall be fully subordinated to any obligations respecting the Company or the Property (including, without limitation, the First Mortgage) and such indemnification shall not constitute a claim against the Corporation or the Company in the event that cash flow in excess of amounts necessary to pay holders of such obligations is insufficient to pay such obligations.

#### ARTICLE V

#### SEPARATENESS COVENANTS

Notwithstanding any other provision of this Certificate of Incorporation, for so long as the First Mortgage exists on any portion of the Property and the Company owns the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in the certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate or, if it shares office space with its parent or any affiliate, it shall allocate fairly and reasonably any overhead and expense for

shared office space.

2. It will not engage, directly or indirectly, in any business other than to serve as the Managing Member of the Company and it will conduct and operate its business as presently conducted and operated.

3. 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.

4. It will not enter into any contract or agreement with its parent, any affiliate of the Corporation or any constituent party of the 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.

5. It has not incurred and will not incur any indebtedness and will not permit the Company to incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the indebtedness secured by the mortgage lien and (ii) trade payables or accrued expenses incurred in the ordinary course of the business of operating the property with trade creditors and in amounts as are normal and reasonable under the circumstances. No indebtedness other than the indebtedness secured by the mortgage lien may be secured (subordinate or pari passu) by the Property.

6. It has not made and will not make any loans or advances to any third party including its parent, any affiliate of the Corporation or constituent party of the Corporation and shall not acquire obligations or securities of its affiliates.

7. It is and will remain solvent and will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

8. It has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and it will not amend, modify or otherwise change the articles of incorporation or By-Laws of the Corporation without the prior written consent of the mortgage lien holder or, after the securitization of the Loan, only if the Corporation receives (i) confirmation from each of the applicable rating agencies that such amendment would not result in the qualification, withdrawal or downgrade of any securities rating and (ii) approval of such amendment by the mortgagee holding the First Mortgage.

9. It will maintain all of its books, records, financial statements and bank accounts separate from those of its parent, its affiliates and any constituent party and the Corporation will file its own separate tax returns. It shall maintain its books, records, resolutions and agreements as official records.

10. It will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including its parent, 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 a separate telephone number and separate stationery, invoices and checks.

11. It 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.

12. Neither the Corporation nor any constituent party will seek or permit the dissolution, winding up, liquidation, consolidation or merger in whole or in part, of the 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.

13. It will not commingle the funds and other assets of the Corporation with those of its parent, any affiliate or constituent party, or any affiliate of any constituent party, or any other person.

14. It has and will maintain its assets in such a manner that it will 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.

15. It shall not pledge its assets and does not and will not hold itself out to be responsible for the debts or obligations of any other person.

16. It shall pay any liabilities out of its own funds, including salaries of any employees.

17. The Corporation shall maintain a sufficient number of employees in light of its contemplated business operations.

18. The Corporation shall not guarantee or become obligated for the debts of any other entity or person.

19. The Corporation shall not form, acquire or hold any subsidiary other than the Company.

20. The Corporation shall cause the Company to comply with the provisions of Articles 1.1, 1.4, 1.7 and 1.8 of its Limited Liability Agreement.

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

"affiliate" means any person controlling or controlled by or under common control with the Corporation, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the corporation, its parent, or



any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from the Corporation, its parent 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.

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the corporation.

"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 VI

### VOTING

When voting on matters concerning the Company, notwithstanding that the Company is not then insolvent, the Corporation shall take into account the interest of the Company's creditors, as well as those of its members to the maximum extent consistent with applicable law.

## ARTICLE VII

### CAPITAL STOCK

This Corporation is authorized to issue 1,000 shares of One (\$1.00) Dollar par value common stock.

## ARTICLE VIII

### 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 pro rata share thereof (as nearly as may be done without issuance of fractional shares) at the price at which it is offered to others.

## ARTICLE IX

### PRINCIPAL OFFICE

The street address of the initial principal office of this Corporation is set forth below, which office may be changed from time to time by the Directors of the Corporation:

1730 East Commercial Boulevard  
Fort Lauderdale, Florida 33334

## ARTICLE X

### INITIAL REGISTERED OFFICE AND AGENT

The street address of the initial registered office of this Corporation is 2101 West Commercial Boulevard, Suite 2800, Fort Lauderdale, Florida 33309 and the name of the initial registered agent of this corporation at that address is Vincent J. Altino, Esquire.

## ARTICLE XI

### INITIAL BOARD OF DIRECTORS

This Corporation shall have one (1) director initially. The number of directors may be either increased or diminished from time to time by the By-Laws, but shall never be less than one (1). The name and address of the initial directors of the corporation is:

Kenneth L. Shimm  
1730 East Commercial Boulevard  
Fort Lauderdale, Florida 33334

## ARTICLE XII

### INCORPORATOR

The name and address of the incorporator signing these Articles is:

Kenneth L. Shimm  
1730 East Commercial Boulevard  
Fort Lauderdale, Florida 33334

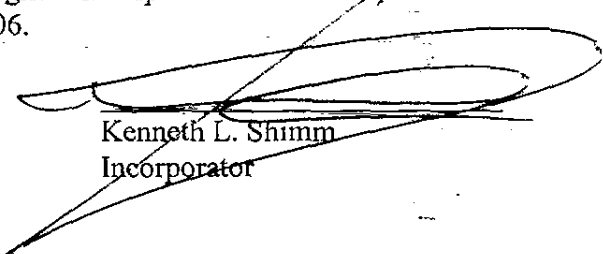
## ARTICLE XIII

### AMENDMENT

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

(Signature Page follows)

IN WITNESS WHEREOF, the undersigned Incorporator has executed these Articles of Incorporation this 14 day of February, 2006.

  
Kenneth L. Shimm  
Incorporator

STATE OF FLORIDA  
COUNTY OF BROWARD

BEFORE ME, a notary public authorized to take acknowledgments in the State and County set forth above, personally appeared Kenneth L. Shimm, known to me and known by me to be the person who executed the foregoing Articles of Incorporation, and he acknowledged before me that she executed those Articles of Incorporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, in the State and County aforesaid, this 14 day of February, 2006.

  
Notary Public  
State of Florida at Large

My Commission Expires:



**Betty Russell Buffum**  
Commission # DD424031  
Expires June 30, 2009

Bonded Troy Fair - Insurance, Inc. 800-365-7019

*The amendment was adopted by the incorporator and shareholder action was not required. Adoption date was 2/14/06*

IN WITNESS WHEREOF, the undersigned Incorporator has executed these Articles of Incorporation this 14 day of February, 2006.

  
Kenneth L. Shimm  
Incorporator

STATE OF FLORIDA  
COUNTY OF BROWARD

BEFORE ME, a notary public authorized to take acknowledgments in the State and County set forth above, personally appeared Kenneth L. Shimm, known to me and known by me to be the person who executed the foregoing Articles of Incorporation, and he acknowledged before me that she executed those Articles of Incorporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, in the State and County aforesaid, this 14 day of February, 2006.

  
Notary Public  
State of Florida at Large

My Commission Expires:



**Betty Russell Buffum**  
Commission # DD424031  
Expires June 30, 2009  
Bonded Troy Fain - Insurance, Inc. 800-355-7019