

Division of Corporations

Page 1 of 1

Florida Department of State
Division of Corporations
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.

(((H13000164060 3)))



H130001640603ABCV

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) 617-6381

From:

Account Name : BERGER SINGMAN - FORT LAUDERDALE
Account Number : I20020000154
Phone : (954) 525-9900
Fax Number : (954) 523-2872

Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.

Email Address: scott@hunterandharp.com

FLORIDA PROFIT/NON PROFIT CORPORATION
415 Member Inc.

Certificate of Status	0
Certified Copy	1
Page Count	09
Estimated Charge	\$78.75

[Electronic Filing Menu](#)[Corporate Filing Menu](#)[Help](#)

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
13 JUL 23 AM 11:16

RECEIVED
13 JUL 23 PM 1:04
DEPARTMENT OF STATE
DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA

PS 7/24/13

H13000164060

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS

13 JUL 23 AM 11:16

**ARTICLES OF INCORPORATION
OF
415 MEMBER INC.**

Article I

The name of the Corporation is 415 MEMBER INC. (the "Corporation").

Article II

The street and mailing address of the current principal place of business and registered office of the Corporation is 311 East Jennings Street, Tallahassee, FL 32301. The name of its registered agent at that address is James Chad Kittrell, 311 East Jennings Street, Tallahassee, FL 32301.

Article III

Notwithstanding any other provision of these Articles of Incorporation, any other organizational documents or any provisions of law that empowers the Corporation, the following provisions shall be operative and controlling so long as the loan (the "Loan") by CIBC INC., a Delaware corporation, or its successors and/or assigns (collectively, the "Lender") to 415 Food and Beverage, LLC (the "Company") is outstanding:

1. The sole purpose of the Corporation is and will be to manage, own and hold the membership interest in, the Company, whose sole purpose is to acquire, own, hold, maintain and operate the portion of the Property owned by it, together with such other activities as may be necessary or advisable in connection with such limited purpose. The Corporation has not engaged and shall not engage in any business other than the foregoing, and it has and shall have no purpose, unrelated to the foregoing purpose and has not owned, does not own and shall not acquire any real property or own assets other than those in furtherance of the foregoing limited business and purposes of the Corporation.
2. The Corporation shall have no authority to perform any act in violation of any (a) applicable laws or regulations or (b) any agreement between the Company and the Lender and the Corporation and the Lender.
3. The Corporation shall at all times be a corporation that, at all times, has an Independent Director.
4. The Corporation shall not:
 - (a) make any loans to any shareholder, Affiliate, any Equity Holder or any Affiliate of any shareholder or Equity Holder;

H13000164060

H13000164060

(b) except as permitted by the Lender in writing, sell, encumber (except with respect to Lender) or otherwise transfer or dispose of all or substantially all of the properties of the Corporation (a sale or disposition will be deemed to be "all or substantially all of the properties of the Corporation" if the total value of the properties sold or disposed of in such transaction and during the twelve months preceding such transaction is sixty six and two thirds percent (66-2/3%) or more in value of the Corporation's total assets as of the end of the most recently completed corporate fiscal year);

(c) to the fullest extent permitted by law, dissolve, wind up or liquidate the Corporation;

(d) merge, consolidate or acquire all or substantially all of the assets of an any other person or entity (whether or not an Affiliate);

(e) act in a manner not consistent with the assumptions of any Non-Consolidation Opinion delivered to Lender in connection with any Transfer;

(f) perform, nor shall any Controlling Entity of Corporation have the authority to cause Corporation to perform, any act in respect of Corporation in violation of any (a) applicable laws or regulations or (b) any agreement between Corporation and Lender (including, without limitation, these Articles of Incorporation and the other Loan Documents);

(g) change the nature of the business of the Corporation; or

(h) except as permitted by the Lender in writing, amend, modify or otherwise change its Organizational Documents (which approval, after a Secondary Market Transaction with respect to the Loan, may be conditioned upon Lender's receipt of a Rating Confirmation).

5. The Corporation shall not, and no person or entity on behalf of the Corporation shall, either with respect to the Corporation or the Company, without the prior written affirmative vote of both (1) one hundred percent (100%) of the board of directors of Corporation, and (2) the Independent Director of the Corporation: (a) institute proceedings to be adjudicated bankrupt or insolvent; (b) consent to the institution of bankruptcy or insolvency proceedings against it or the Company; (c) file a petition seeking, or consenting to, reorganization or relief under any applicable federal or state law relating to bankruptcy; (d) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Corporation or the Company or a substantial part of their respective property; (e) make any assignment for the benefit of creditors; (f) admit in writing its or the Company's inability to pay their respective debts generally as they become due or declare or effect a moratorium on its or the Company's respective debts; or (g) take any corporate action in furtherance of any such action ((a) through (g) above, with respect to any individual or entity, collectively, a "Bankruptcy Action").

6. The Corporation shall have no indebtedness or incur any liability other than (a) unsecured debts and liabilities for trade payables and accrued expenses incurred in the ordinary course of its

H13000164060

H13000164060

business managing, owning and holding the membership interest in the Company, provided, however, that such unsecured indebtedness or liabilities (i) are in amounts that are normal and reasonable under the circumstances, but in no event to exceed two percent (2%) of the original principal amount of the Loan and (ii) are not evidenced by a note and are paid when due, but in no event for more than sixty (60) days from the date that such indebtedness or liabilities are incurred and (b) the Loan. No indebtedness of the Corporation shall be secured.

7. A Bankruptcy Action by or against any shareholder, director or officer of the Corporation shall not cause such shareholder, director or officer of Corporation to cease to be a shareholder, director or officer of the Corporation and upon the occurrence of a Bankruptcy Action, the Corporation shall continue without dissolution. Additionally, to the fullest extent permitted by law, if any shareholder, director or officer of the Corporation ceases to be a shareholder, director or officer of the Corporation such event shall not terminate the Corporation and Corporation shall continue without dissolution.

8. The Corporation shall at times observe the applicable legal requirements for the recognition of the Corporation as a legal entity separate from any Equity Holder or Affiliates of the Corporation, including, without limitation, as follows:

(a) The Corporation shall either (A) maintain its principal executive office and telephone and facsimile numbers separate from that of any Affiliate or any Equity Holder and shall conspicuously identify such office and numbers as its own, or (B) shall allocate by written agreement fairly and reasonably any rent, overhead and expenses for shared office space. Additionally, the Corporation shall use its own separate stationery, invoices and checks which reflects its separate name, address, telephone number and facsimile number.

(b) The Corporation shall maintain correct and complete financial statements, accounts, books and records and other entity documents separate from those of any Affiliate or any Equity Holder of same or any other person or entity. The Corporation shall prepare unaudited quarterly and annual financial statements, and the Corporation's financial statements shall substantially comply with generally accepted accounting principles.

(c) The Corporation shall maintain its own separate bank accounts, payroll and correct, complete and separate books of account.

(d) The Corporation shall file or cause to be filed its own separate tax returns, unless the Corporation is not required to file any such tax returns, including by virtue of being a "disregarded entity" for tax purposes.

(e) The Corporation shall hold itself out to the public (including any of its Affiliates' creditors) under the Corporation's own name and as a separate and distinct entity and not as a department, division or otherwise of any Affiliate or any Equity Holder.

(f) The Corporation shall observe all customary formalities regarding the

H13000164060

H13000164060

corporate existence of the Corporation, including holding required meetings and maintaining current and accurate entity record books separate from those of any Affiliate or any Equity Holder.

(g) The Corporation shall hold title to its assets in its own name and act solely in its own name and through its own duly authorized officers and agents. No Affiliate or Equity Holder shall be appointed or act as agent of the Corporation, other than, as applicable, a property manager with respect to the Property, or as an officer or director of the Corporation.

(h) Investments shall be made in the name of the Corporation directly by the Corporation or on its behalf by brokers engaged and paid by the Corporation.

(i) Except as required by Lender, the Corporation shall not guarantee, pledge or assume or hold itself out or permit itself to be held out as having guaranteed, pledged or assumed any liabilities or obligations of any Affiliate or Equity Holder of the Corporation, nor shall it make any loan, except as permitted in the Loan Documents.

(j) The Corporation was solvent as of the date of its formation and remains solvent as of the date hereof, and will not make any distribution to its shareholders or dividend to its shareholders if doing so would cause it not to be solvent.

(k) Assets of the Corporation shall be separately identified, maintained and segregated. The Corporation's assets shall at all times be held by or on behalf of the Corporation and if held on behalf of the Corporation by another entity, shall at all times be kept identifiable (in accordance with customary usages) as assets owned by the Corporation. This restriction requires, among other things, that (i) Corporation funds shall be deposited or invested in the Corporation's name, (ii) Corporation funds shall not be commingled with the funds of any Affiliate or any Equity Holder, (iii) the Corporation shall maintain all accounts in its own name and with its own tax identification number, separate from those of any Affiliate or any Equity Holder, and (iv) Corporation funds shall be used only for the business of the Corporation.

(l) The Corporation shall 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 Equity Holder.

(m) The Corporation shall pay or cause to be paid its own liabilities and expenses of any kind, including but not limited to salaries of its employees, only out of its own separate funds and assets (to the extent the Corporation has enough funds and assets to pay or cause to be paid same, and provided that the foregoing covenant does not require any capital contributions to be made by shareholders of the Corporation).

(n) The Corporation shall at all times be adequately capitalized to engage in the transactions contemplated at its formation, and will not make any distribution to its shareholders or dividend to its shareholders if doing so would cause it not to be adequately capitalized (to the extent the Corporation has enough funds and assets to be

H13000164060

H13000164060

adequately capitalized, and provided that the foregoing covenant does not require any capital contributions to be made by shareholders of the Corporation).

(o) The Corporation shall not do any act which would make it impossible to carry on the ordinary business of the Corporation.

(p) All data and records (including computer records) used by the Corporation or any Affiliate of same in the collection and administration of any loan shall reflect the Corporation's ownership interest therein.

(q) None of the Corporation's funds shall be invested in securities issued by, nor shall the Corporation acquire the indebtedness or obligation of, any Affiliate or any Equity Holder, except that the Corporation may own securities of the Company.

(r) The Corporation shall maintain an arm's length relationship with each of its Affiliates and Equity Holders, and may enter into contracts or transact business with its Affiliates or Equity Holders only on commercially reasonable terms that are no less favorable to the Corporation than is obtainable in the market from a person or entity that is not an Affiliate or Equity Holder.

(s) The Corporation shall correct any misunderstanding that is known by the Corporation regarding its name or separate identity.

For purposes of these Articles of Incorporation, Affiliate shall mean any person or entity, including, but not limited to, the Company, which directly or indirectly through one or more intermediaries (i) controls, is controlled by or is under common control with a specified person or entity, or (ii) at least twenty-five percent (25%) of the ownership interests in which are owned by a specified person or entity and/or entities described in clause (i) above with respect thereto, or (iii) owns (individually or with other entities described in clause (i) above) at least twenty-five percent (25%) of the ownership interests in a specified person or entity. For purposes of the definition of "Affiliate", the terms "control", "controlled", or "controlling" with respect to a specified person or entity shall include, without limitation, (i) the ownership, control or power to vote ten percent (10%) or more of (x) the outstanding shares of any class of voting securities or (y) beneficial interests, of any such person or entity, as the case may be, directly or indirectly, or acting through one or more persons or entities, (ii) the control in any manner over the shareholder(s) or the election of more than one director or trustee (or persons exercising similar functions) of such person or entity, or (iii) the power to exercise, directly or indirectly, control over the management or policies of such person or entity.

9. Any indemnification obligation of the Corporation shall (a) be fully subordinated to the Loan and (b) to the extent cash flow in excess of the amount required to pay the Debt then-due is insufficient to pay such obligation, not constitute a claim against the Corporation or its assets until such time as the Loan has been indefeasibly paid in accordance with its terms and otherwise has been fully discharged (or, if applicable, defeased as contemplated by the Loan Agreement (as defined below)).

H13000164060

H13000164060

10. To the fullest extent permitted by law, and notwithstanding any duty otherwise existing at law or in equity, the Independent Director shall consider only the interests of this entity and the Company, including their respective creditors, in exercising such person's authority as an Independent Director. Except for duties to the entity in which it is an Independent Director and to the Company as set forth in the immediately preceding sentence (including duties to creditors solely to the extent of their respective economic interests in the Corporation or the Company, but excluding (i) all other interests of such entity, (ii) the interests of other Affiliates of such entity, and (iii) the interests of any group of Affiliates of which the entity is a part), the Independent Directors shall not have any fiduciary duties to the entity, any other member or director of such entity, or to the Corporation or Lender); provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

11. To the fullest extent permitted by law, an Independent Director shall not be liable to the entity in which it serves for breach of contract or breach of duties (including fiduciary duties), unless the Independent Director acted in bad faith or engaged in willful misconduct.

12. No Independent Director shall resign or be removed or replaced, in each case unless Lender receives not less than five (5) business days' prior written notice of (a) any proposed resignation or removal or replacement of such Independent Director, and (b) the identity of the proposed replacement Independent Director, together with evidence satisfactory to Lender that such replacement satisfies the applicable requirements to be an Independent Director, in each case except for removal of an Independent Director by reason of (y) acts or omissions by such Independent Director that constitute willful disregard of such Independent Director's duties, in accordance with the standards set forth herein, or (z) such Independent Director having engaged in or having been charged with, or having been convicted of, fraud or other acts constituting a crime under any law applicable to such Independent Director, in which case a replacement Independent Director shall be identified and elected or appointed within five (5) business days after the Corporation knew or was deemed to have known thereof.

13. Notwithstanding anything to the contrary contained in these Articles of Incorporation, any capitalized terms not otherwise defined in this Article III or in Article I shall have the meaning ascribed to such term in that certain Loan Agreement (the "Loan Agreement") executed by the Company and Lender in connection with the Loan.

Article IV

The aggregate number of shares of capital stock which the Corporation shall have the authority to issue is one hundred thousand (100,000) shares of Common Stock, par value \$0.01 per share.

H13000164060

H13000164060

Article V

The board of directors of the Corporation (the "Board of Directors") shall consist of not fewer than four (4) members. The number of directors constituting the Board of Directors, within the limits set forth herein, may be fixed, and increased or decreased, from time to time as provided in the bylaws of the Corporation. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of, the Board of Directors. Members of the Board of Directors must be natural persons who are at least 18 years of age but need not be residents of Florida or shareholders of the Corporation.

Article VI

To the fullest extent permitted under the Florida Business Corporation Act, Chapter 607, Florida Statutes (as the same may be amended from time to time, the "FBCA"), and other applicable law, no member of the Board of Directors of the Corporation is or shall be personally liable to the Corporation or any of its shareholders or any other person for monetary damages for or relating to or in respect of any statement, vote, decision, action or failure to vote, decide or take action by a director or the Board of Directors, unless the breach or failure to perform his or her duties as a director is proven to satisfy the standards set forth in Section 706.0831 of the FBCA (as the same exists or may hereafter be amended). To the fullest extent permitted under the FBCA and other applicable law, and without limiting the preceding sentence in this Article VI, a member of the Board of Directors shall not be or be held liable for any action taken as a director, or any failure to take action, if he or she performed the duties of his or her office in compliance with the applicable general standards for directors as provided under Section 607.0830 of the FBCA (as the same exists or may hereafter be amended). Notwithstanding the foregoing, if the FBCA is amended hereafter to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent authorized by the FBCA, as so amended. Any repeal or modification of this Article VI shall not adversely affect any right, protection or limitation of liability of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

Subject to Article III hereof, the Corporation shall indemnify its directors and officers to the fullest extent authorized or permitted by law, as now or hereafter in effect, and such right to indemnification shall continue as to a person who has ceased to be a director or officer of the Corporation and shall inure to the benefit of his or her heirs, executors, administrators and personal and legal representatives; provided, however, that, except for proceedings to enforce rights to indemnification, the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors, administrators or personal or legal representatives) in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors. Such indemnification shall be authorized if such director or officer acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation. The right to indemnification conferred by this Article VI shall include the right to be paid by the Corporation the expenses incurred in defending or otherwise participating in any proceeding in advance of the final disposition of such proceeding upon the Corporation's receipt of an undertaking by or on behalf of the director or officer to repay such amounts if it shall ultimately be determined and

H13000164060

H13000164060

found that he or she is not entitled to be indemnified by the Corporation pursuant to this Article VI.

Subject to Article III hereof, the Corporation may, to the extent authorized from time to time in or pursuant to the Corporation's bylaws or otherwise by resolution of the Board of Directors, provide rights to indemnification and/or to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article VI to directors and officers of the Corporation.

Subject to Article III hereof, the rights to indemnification and to the advancement of expenses conferred in this Article VI shall not be exclusive of any other right(s) which any person may have or hereafter acquire under these Articles of Incorporation, the bylaws of the Corporation, any statute, agreement, vote of shareholders or disinterested directors or otherwise.

Any repeal or modification of this Article VI shall not adversely affect any rights to indemnification and/or to the advancement of expenses of a director or officer of the Corporation existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

The Corporation shall have the power and authority to purchase and maintain insurance (including, without limitation, errors and omissions insurance) on behalf of and for the benefit of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability or expenses asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability or expenses under the provisions of this Article VI.

The bylaws of the Corporation may include rules, procedures and provisions applicable to indemnification, advancement of expenses and insurance matters not inconsistent with this Article VI. The terms "expenses", "liability", "proceeding" and "serving at the request of the corporation" as used herein shall be construed broadly and shall have the meanings ascribed to such terms under Section 607.0850 of the FBCA (as the same exists or may hereafter be amended).

Article VII

Subject to Article III, the Corporation reserves the right to alter, amend or repeal any provision contained in these Articles of Incorporation, or any amendment thereto, in the manner provided in the FBCA (as the same exists or may hereafter be amended), and any and all rights conferred upon the shareholders is subject to this reservation.

Article VIII

The name and address of the incorporator is as follows:

David K. Black
350 East Las Olas Blvd.

H13000164060

H13000164060

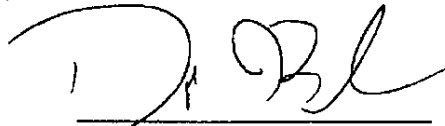
FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS

13 JUL 23 AM 11:16

Suite 1000
Ft. Lauderdale, FL 33301

The foregoing Articles of Incorporation have been duly adopted by the sole incorporation in accordance with the applicable provisions of the Florida Business Corporation Act.

Executed this 23rd day of July, 2013.



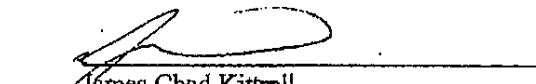
David K. Black, Incorporator

CONSENT TO APPOINTMENT AS REGISTERED AGENT

OF

415 MEMBER INC.

The undersigned, James Chad Kittrell, whose business address is 311 East Jennings Street, Tallahassee, FL 3230, hereby accepts appointment as the registered agent of **415 MEMBER INC.**, a Florida corporation, and is familiar with and accepts the obligations provided for in Section 607.0505, Florida Statutes.



James Chad Kittrell
Registered Agent

H13000164060