

P15000092801

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP

☐ WAIT

☐ MAIL

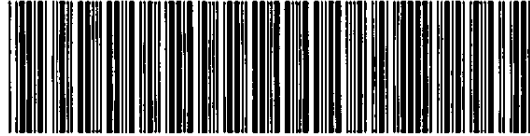
(Business Entity Name)

(Document Number)

Certified Copies _____ Certificates of Status _____

Special Instructions to Filing Officer:

Office Use Only



100279706631

12/08/15--01016--015 **95.00

FILED
15 DEC -8 AM 8:13
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

DEC 11 2015

T. LEWIS

COVER LETTER

TO: Amendment Section
Division of Corporations

ESO GALLERIA MANAGER, INC.

NAME OF CORPORATION: _____

P15000092801

DOCUMENT NUMBER: _____

The enclosed *Articles of Amendment* and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

Marilyn G. Olmsted

Name of Contact Person

Samuel D. Navon, P.A.

Firm/ Company

7805 SW 6th Court

Address

Plantation, FL 33324

City/ State and Zip Code

molmsted@navonlaw.com

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Marilyn G. Olmsted

at (954) 380-8848

Name of Contact Person

Area Code & Daytime Telephone Number

Enclosed is a check for the following amount made payable to the Florida Department of State:

- | | | | |
|---|--|---|--|
| <input checked="" type="checkbox"/> \$35 Filing Fee | <input type="checkbox"/> \$43.75 Filing Fee &
Certificate of Status | <input type="checkbox"/> \$43.75 Filing Fee &
Certified Copy
(Additional copy is
enclosed) | <input type="checkbox"/> \$52.50 Filing Fee
Certificate of Status
Certified Copy
(Additional Copy
is enclosed) |
|---|--|---|--|

Mailing Address

Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

Street Address

Amendment Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

**ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
ESO GALLERIA MANAGER, INC.**

FILED
75 DEC -8 AM 8:13
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The Articles of Incorporation of **ESO GALLERIA MANAGER, INC.**, a Florida corporation ("Corporation"), filed with the Department of State on November 12, 2015, Document Number P15000092801, be, and it hereby is, amended as shown below:

The Articles of Incorporation of this Corporation are amended to include the following Article:

"SINGLE PURPOSE/BANKRUPTCY REMOTE FORMATION

Notwithstanding any other provision of these Articles of Incorporation, any other organizational documents or any provisions of law that empowers this Corporation, the following provisions shall be operative and controlling so long as the loan (the "Loan") by German American Capital Corporation, a Maryland corporation or its successors and/or assigns (collectively, the "Lender") to ESO Galleria, LLC, a Florida limited liability company ("Company") secured by a mortgage lien upon that certain real property legally described on **Exhibit "A"** attached hereto, is outstanding:

1. The sole purpose for which the Corporation is organized is to acquire, manage, own and hold a membership interest in the Company, whose sole purpose is to act a manager of the Company, together with such other activities as may be necessary or advisable in connection with such limited purpose. The Corporation has never, and shall not engage in any business, and it shall have no purpose, unrelated to the foregoing purpose and shall not acquire any real property or own assets other than those in furtherance of the limited purposes of the Corporation. Any terms defined herein shall have the same meaning as in the "Loan Agreement" pertaining to the Loan.

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 not:

(a) make any loans to any shareholder or the Corporation's or any shareholder's Affiliates (as defined below);

(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 Affiliate of same or other person or entity;

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

(f) except as permitted by the Lender in writing, amend, modify or otherwise change these Articles of Incorporation (or, after securitization of the Loan, only if the

Corporation receives: (i) written confirmation from each of the applicable rating agencies that such amendment, modification or change would not result in the qualification, withdrawal or downgrade of any securities rating and (ii) permission of the Lender in writing).

4. The Corporation shall not, and no person or entity on behalf of the Corporation shall, either with respect to itself or the Company, without the prior written affirmative vote of one hundred percent (100%) of the Board of Directors: (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.

5. The Corporation shall have no indebtedness or incur any liability, whether secured or unsecured.

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

(a) The Corporation shall maintain its principal executive office and telephone and facsimile numbers separate from that of any Affiliate of same and shall conspicuously identify such office and numbers as its own or 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 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 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.

(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 corporate entity and not as a department, division or otherwise of any Affiliate of same.

(f) The Corporation shall observe all customary formalities regarding the corporate existence of the Corporation, including holding meetings and maintaining current and accurate minute books separate from those of any Affiliate of same.

(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 of same shall be appointed or act as agent of the Corporation, other than, as applicable, a property manager with respect to the Property.

(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 or its agents.

(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 of the Corporation, nor shall it make any loan, except as permitted in the loan agreement with the Lender.

(j) The Corporation is and will be solvent and will not make any distribution or dividend 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 of same or other person or entity, (iii) the Corporation shall maintain all accounts in its own name and with its own tax identification number, separate from those of any Affiliate of same or other person or entity, and (iv) Corporation funds shall be used 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 of same or other person or entity.

(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.

(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 of dividend if doing so would cause it not to be adequately capitalized.

(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 of same.

(r) The Corporation shall maintain an arm's length relationship with each of its Affiliates and enter into contracts or transact business with its Affiliates 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 of same.

(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 means any person or entity, including, but not limited to, the Company, which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a specified person or entity. For purposes hereof, 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.

7. Any indemnification obligation of the Corporation shall (a) be fully subordinated to the Loan and (b) 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.

8. The Board of Directors of the Corporation shall be required to consider the interests of creditors of the Corporation and the Company in connection with all corporate action.

The foregoing amendment was adopted by the sole Director and sole Shareholder of this Corporation, effective as of December 7, 2015.

SEE SIGNATURE ON NEXT PAGE

IN WITNESS WHEREOF, the undersigned, being the President of this Corporation, has executed these Articles of Amendment as of this 7 day of December, 2015.

STATE OF FLORIDA }
COUNTY OF BROWARD }

ss.

ORITAL, President

December The foregoing instrument was acknowledged before me this 7 day of December, 2015, by Ori Tal, President of ESO Galleria Manager, Inc., a Florida corporation, on behalf of the Corporation. He is personally known to me.

Marilyn G. Olmsted
Notary Public

Marilyn G. Olmsted
Name of Notary typed or printed

My Commission Expires:



EXHIBIT "A"

All of Lots 1, 2, 3, 4 and 5 Block P, COCOA ISLES SIXTH ADDITION, according to the plat thereof as recorded in Plat Book 14, Page 4, and a portion of Tract No. 4 and a portion of Tract No. 7, RESUBDIVISION OF S. HALF OF BLOCKS 19 & 20, AND ALL OF BLOCKS 21 TO 32 INCLUSIVE, PLAT OF SEA CREST BEACH, according to the plat thereof recorded in Plat Book 9, Page 27, and a portion of the 308 acre tract as shown on the plat of SEA CREST BEACH, according to the plat thereof recorded in Plat Book 3, Page 3, of the Public Records of Brevard County, Florida all lying in Section 10, Township 25 South, Range 37 East, Brevard County, Florida, being more particularly described as follows:

Begin at the Southeast corner of said Lot 5; thence the following 2 courses along the South line of said Lot 5; (1) N 89°17'28"W, a distance of 24.74 feet; (2) N 85°06'37"W, a distance of 125.33 feet, to the West line of said Block P and a point of intersection with a non-tangent curve, concave Easterly, having a radius of 759.12 feet and a central angle of 20°42'21"; thence the following 3 courses along said West line: (1) Northerly, along the arc of said curve to the right, a distance of 274.33 feet (said arc subtended by a chord bearing N 15°15'02"E, a distance of 272.84 feet) to a point of tangency; (2) N 25°36'12"E, along said West line, a distance of 175.74 feet, to the point of curvature of a curve, concave Southerly, having a radius of 25.17 feet and a central angle of 88°25'15"; (3) Easterly, along the arc of said curve to the right, a distance of 38.84 feet, to a point of reverse curvature with a curve concave Northerly, having a radius of 452.07 feet and a central angle of 32°06'08"; thence Easterly, along the South right of way line of Cocoa Isles Boulevard and along the arc of said curve to the left, a distance of 253.29 feet to a point of reverse curvature with a curve, concave Southwesterly, having a radius of 14.41 feet and a central angle of 90°21'52"; thence Southeasterly, along the arc of said curve to the right, a distance of 22.73 feet, to a point of reverse curvature with a curve, concave Easterly, having a radius of 3,869.83 feet and a central angle of 04°17'44"; thence Southerly, along the West right of way line of State Road A-1-A and along the arc of said curve to the left, a distance of 290.12 feet, to a point of intersection with a non-tangent line, said line also being the North line of that parcel described in Official Records Book 984, Page 450 of said public records; thence N 89°14'21"W, along said North line, a distance of 322.76 feet, to a point of intersection with the East line of said Block P and a non-tangent curve, concave Easterly, having a radius of 609.12 feet and a central angle of 11°09'07"; thence Southerly, along said East line and the arc of said curve to the left, a distance of 118.56 feet (said arc subtended by a chord bearing S 10°38'43" W, a distance of 118.57 feet) to the POINT OF BEGINNING.