

03/10/98 TUE 16:25 FAX

KIRK PINKERTON

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P98000020373

FLORIDA DIVISION OF CORPORATIONS

PUBLIC ACCESS SYSTEM
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((H98000004677 4))

TO: DIVISION OF CORPORATIONS
(850) 922-4000

FAX #:

FROM: KIRK PINKERTON, A PROFESSIONAL ASSOCIATION
071670002600

ACCT#:

CONTACT: JUDY ROSENFELD

PHONE: (941) 364-2409

FAX #:

(941) 364-2490

NAME: LBK RESORT ADVISORS, INC.

AUDIT NUMBER.....H98000004677

DOC TYPE.....BASIC AMENDMENT

CERT. OF STATUS..0

PAGES..... 5

CERT. COPIES.....1

DEL.METHOD.. FAX

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TALLAHASSEE, FLORIDA

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DIVISION OF CORPORATIONS

Amendment
3/11/98
DC

03/10/98 TUE 12:38 FAX
3/10/98
12:20 PM

KIRK PINKERTON

001

FLORIDA DIVISION OF CORPORATIONS

PUBLIC ACCESS SYSTEM
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((H98000004677 4))

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(850)922-4000

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ENTER SELECTION AND <CR>:



FLORIDA DEPARTMENT OF STATE
Sandra B. Mortham
Secretary of State

March 10, 1998

LBK RESORT ADVISORS, INC.
521 FIFTH AVENUE SUITE 2300
NEW YORK, NY 10175

SUBJECT: LBK RESORT ADVISORS, INC.
REF: P98000020373

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refax the complete document, including the electronic filing cover sheet.

Please complete the date on Exhibit A, C. first paragraph on the 5th line:

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) 487-6906.

Darlene Connell
Corporate Specialist

FAX Aud. #: H98000004677
Letter Number: 298A00013045

**ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF**

LBK RESORT ADVISORS, INC.

(present name)

Pursuant to the provisions of section 607.1006, Florida Statutes, this corporation adopts the following articles of amendment to its articles of incorporation:

FIRST: Amendment(s) adopted: *(indicate article number(s) being amended, added or deleted)*

The Articles of Incorporation of LBK Resort Advisors, Inc. are hereby amended to delete Paragraph C of Article 4 in its entirety, and the following paragraph is inserted in lieu thereof in Article 4:

"See Exhibit A attached hereto."

FILED
98 MAR 11 AM 8:33
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

SECOND: If an amendment provides for an exchange, reclassification or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself, are as follows: N/A

Prepared by: David M. Silberstein, Esq.
Kirk Pinkerton, P.A.
720 South Orange Avenue
Sarasota, Florida 34236
Phone: (941) 364-2481
Atty. Bar #436879

THIRD: The date of each amendment's adoption: March 9, 1998

FOURTH: Adoption of Amendment(s) (CHECK ONE)

☒ The amendment(s) was/were approved by the shareholders. The number of votes cast for the amendment(s) was/were sufficient for approval.

☐ The amendment(s) was/were approved by the shareholders through voting groups.
The following statement must be separately provided for each voting group entitled to vote separately on the amendment(s):

"The number of votes cast for the amendment(s) was/were

sufficient for approval by _____
voting group

☐ The amendment(s) was/were adopted by the board of directors without shareholder action and shareholder action was not required.

☐ The amendment(s) was/were adopted by the incorporators without shareholder action and shareholder action was not required.

Signed this day 9th of March, 19 98

Signature 

(By the Chairman or Vice Chairman of the Board of Directors, President or other officer if adopted by the shareholders)

OR

(By a director if adopted by the directors)

OR

(By an incorporator if adopted by the incorporators)

Joseph S. Lesser, President

Typed or printed name

Loeb Partners Realty and Development Corp., Sole Shareholder

Title

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EXHIBIT A

ARTICLES OF AMENDMENT TO
ARTICLES OF INCORPORATION
OF
LBK RESORT ADVISORS, INC.

"C. Notwithstanding anything in these Articles of Incorporation to the contrary, unless and until that certain loan (the "Loan") from Nomura Asset Capital Corporation (together with its successors and assigns, the "Lender") to Key Club Associates, Limited Partnership (the "Borrower") made pursuant to that certain Loan Agreement to be entered into on or about March 11, 1998 (the "Loan Agreement") is paid in full in accordance with the Loan Documents, (i) the Corporation shall be a Single Purpose Entity (as defined below), (ii) the Corporation shall not take any action that would cause the Corporation, or any other person that is required to be a Single Purpose Entity in connection with the Loan Agreement, not to be Single Purpose Entities, (iii) the Corporation shall not engage in or consent to any Transfer (as hereinafter defined), and (iv) the Corporation shall act solely as the Manager of the Property pursuant to the Management Agreement. Capitalized terms used but not defined in this Article 4 have the meanings ascribed to them in the Loan Agreement. Certain of the foregoing terms have the following meanings for purposes hereof:

"Single-Purpose Entity" means a corporation, limited partnership, or limited liability company which, after the date hereof:

(i) was organized solely for the purpose of: (A) owning or managing the Property; (B) acting as the managing member of the limited liability company which owns the Property; or (C) acting as the general partner of a limited partnership which owns the Property, and at all times since its formation and thereafter: (ii) has not and will not engage in any business unrelated to: (A) the ownership or management of the Property; or (B) acting as a member of a limited liability company which owns the Property; or (C) acting as a general partner of a limited partnership which owns the Property, (iii) has not and will not have any assets other than: (A) those related to the Property or the management of the Property; or (B) its member interest in the limited liability company which owns the Property; or (C) its general partner interest in the limited partnership which owns the Property, as applicable, (iv) except as otherwise expressly permitted in these Articles of Incorporation, has not and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale, transfer of partnership or membership interests, or amendment of its limited partnership agreement, articles of incorporation, articles of organization, certificate of formation or operating agreement (as applicable), (v) if such entity is a limited partnership, has and will have as its only general partners, general partners which are and will be Single-Purpose Entities which are corporations, (vi) if such entity is a corporation, at all relevant times will have at least one Independent Director, (vii) the board of directors of such entity may not take any action requiring the unanimous affirmative vote of 100% of the members of the board of directors unless all of the directors, including an Independent Director shall have participated in such vote, (viii) has not and will not fail to correct any known misunderstanding regarding the separate identity of such entity, (ix) if such entity is a limited liability company, has and will have at least one member that is and will be

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a Single-Purpose Entity which is and will be a corporation, and such corporation is and will be the managing member of such limited liability company, (x) without the unanimous consent of all of the partners, directors or members, as applicable, has not and will not with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest: (A) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally; (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such entity or all or any portion of such entity's properties; (C) make any assignment for the benefit of such entity's creditors; or (D) take any action that might cause such entity to become insolvent, (xi) has maintained and will maintain its accounts, books and records separate from any other person or entity, (xii) has maintained and will maintain its books, records, resolutions and agreements as official records, (xiii) has not commingled and will not commingle its funds or assets with those of any other entity, (xiv) has held and will hold its assets in its own name, (xv) has conducted and will conduct its business in its own name, (xvi) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other person or entity, (xvii) has paid and will pay its own liabilities out of its own funds and assets, (xviii) has observed and will observe all partnership, corporate or limited liability company formalities as applicable, (xix) except for the Management Agreement, has maintained and will maintain an arms-length relationship with its affiliates, (xx) (A) if such entity owns the Property, has and will have no indebtedness other than the Loan and unsecured trade payables in the ordinary course of business relating to the ownership and operation of the Property which (1) do not exceed, at any time, an aggregate maximum amount of four percent (4%) of the original Loan Amount, and (2) such trade payables are paid within sixty (60) days of the date incurred, or (B) if such entity acts as the general partner of a limited partnership which owns the Property or as the Manager of the Property, has no indebtedness other than unsecured trade payables in the ordinary course of business relating to acting as general partner of the limited partnership which owns the Property which (1) do not exceed, at any time, \$50,000 and (2) such trade payables are paid within sixty (60) days of the date incurred, or (C) if such entity acts as a member of a limited liability company which owns the Property, has no indebtedness other than unsecured trade payables in the ordinary course of business relating to acting as a member of the limited liability company which owns the Property which (1) do not exceed, at any time, \$50,000 and (2) such trade payables are paid within sixty (60) days of the date incurred, (xxi) has not and will not assume or guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of any other entity except for the Loan, (xxii) will not acquire obligations or securities of its partners, members or shareholders, (xxiii) has allocated and will allocate fairly and reasonably shared expenses, including, without limitation, shared office space and use separate stationery, invoices and checks, (xxiv) has not and will not pledge its assets for the benefit of any other person or entity, (xxv) has held 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 or entity, (xxvi) has not made and will not make loans to any person or entity, (xxvii) has not and will not identify its partners, members or shareholders, or any affiliates of any of them as a division or part of it, (xxviii) if such entity is a limited liability company, its articles of organization, certificate of formation and/or operating agreement, as applicable, shall provide that such entity will dissolve only upon the bankruptcy of the managing member, (xxix) except for the Management Agreement, has not entered and will not enter into or be a party to, any transaction with its partners, members, shareholders or its affiliates except

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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 arms-length transaction with an unrelated third party, (xxx) has paid and will pay the salaries of its own employees from its own funds, (xxxi) has maintained and will maintain adequate capital in light of its contemplated business operations and (xxxii) if such entity is a limited liability company or limited partnership, and such entity has one or more managing members or general partners, as applicable, then such entity shall continue (and not dissolve) for so long as a solvent managing member or general partner, as applicable, exists.

"Independent Director" means a duly appointed member of the board of directors of the Corporation who 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, (i) a direct or indirect legal or beneficial owner the Corporation or any of its affiliates, (ii) a creditor, supplier, employee, officer, director, manager or material contractor of the Corporation or any of its affiliates, (iii) a person who controls the Corporation or any of its affiliates, or (iv) a member of the immediate family of a person defined in (i), (ii) or (iii) above.

"Transfer" means any conveyance, transfer (including, without limitation, any transfer of any direct or indirect legal or beneficial interest (including, without limitation, any profit interest in the Corporation), sale, Lease (including, without limitation, any amendment, extension, modification, waiver or renewal thereof), or Lien, whether by law or otherwise, of, on or affecting the Corporation."

G:\DOCUMENTS\MSL\BKRESOR\EXA

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