

P98000026262

Florida Department of State  
Division of Corporations  
Public Access System  
Katherine Harris, Secretary of State

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.

((H01000121580 4))

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 : LEVINE & PARTNERS, P.A.  
Account Number : 074677001117  
Phone : (305)372-1350  
Fax Number : (305)372-1352

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
2001 DEC 14 PM 5:00

BASIC AMENDMENT

FLAMINGO PARK OF COMMERCE, INC.

RECEIVED  
01 DEC 14 PM 2:43  
DIVISION OF CORPORATIONS

Certificate of Status	1
Certified Copy	1
Page Count	05
Estimated Charge	\$52.50

*Amendment*

12-17-01 12/14/01

DC

H 01000121580 4

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
2001 DEC 14 PM 5:00

ARTICLES OF AMENDMENT  
OF  
FLAMINGO PARK OF COMMERCE, INC.

The following amendment to the Articles of Incorporation of FLAMINGO PARK OF COMMERCE, INC. (the "Corporation") which were filed with the Florida Secretary of State on March 20, 1998 under Document No. P98000026262, was adopted on the 14<sup>th</sup> day of December, 2001 by David M. Howell, its sole shareholder and Director.

Articles X is hereby added to read as follows:

ARTICLE X

A. Purpose

"The nature of the business and of the purposes to be conducted and promoted by the corporation (the "Corporation") is to engage solely in the activity of acting as a general partner of Flamingo Commerce Center, Ltd., a limited partnership (the "Company") whose purpose is to own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property (as defined in the Limited Partnership Agreement of the Company). The Corporation shall exercise all powers enumerated in the Statutes of the State of Florida necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

B. Certain Prohibited Activities

"The Corporation shall only incur or cause the Company to incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien exists on any portion of 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, the Corporation shall not cause the Company to dissolve. The Corporation shall not and shall not cause the Company to consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation or Company) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the corporation or Company substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article X, Item D, and (c) shall expressly assume the due and punctual performance of the Company's obligations; and (ii)

H01000121580 4

G/0423.064/D/AMENDANT-6

immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this corporation or the Company and be continuing. For so long as a mortgage lien exists on any portion of 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 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, no material amendment 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 (defined as any mortgage lien in favor of Deutsche Banc Mortgage Capital, L.L.C., its successors or assigns on any portion of the Property)."

C. Indemnification

"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."

D. Separateness Covenants

"For so long as the First Mortgage exists on any portion of 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 general partner 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, 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.
  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.

For purpose of this Article X, 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.

To the extent there are any inconsistencies between the terms of this Article and the other provisions in the articles of organization, the terms of this Article shall control.

Alan W. Levine, Esq.  
Levine & Partners, P.A.  
1110 Brickell Avenue, 7th Floor  
Miami, FL 33131  
(305) 372-1350  
Florida Bar No. 866822  
H 01000121580 4

H01000121580 4

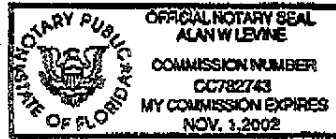
IN WITNESS WHEREOF, the undersigned has executed these Articles of Amendment as of the 14<sup>th</sup> day of December, 2001.

DAVID HOWELL, SHAREHOLDER, DIRECTOR AND PRESIDENT

STATE OF FLORIDA :  
: SS:  
COUNTY OF DADE :

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, David M. Howell, Shareholder, Director and President and on behalf of Flamingo Park of Commerce, Inc., a Florida corporation, who is personally known to me.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at Miami, Dade County, Florida, this 14<sup>th</sup> day of December, 2001.

  
NOTARY PUBLIC STATE OF FLORIDA

My commission expires:

Alan W. Levine, Esq.  
Levine & Partners, P.A.  
1110 Brickell Avenue, 7th Floor  
Miami, FL 33131  
(305) 372-1350  
Florida Bar No. 866822

H01000121580 4

G/0423.064/D/AMENDPART-6