

P99000104670

**CAPITAL CONNECTION, INC.**

417 E. Virginia Street, Suite 1 • Tallahassee, Florida 32302  
(850) 224-8870 • 1-800-342-8062 • Fax (850) 222-1222

Palm Plaza of Miami, Inc.

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-01/20/00-01059-004  
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- Art of Inc. File \_\_\_\_\_
- LTD Partnership File \_\_\_\_\_
- Foreign Corp. File \_\_\_\_\_
- L.C. File \_\_\_\_\_
- Fictitious Name File \_\_\_\_\_
- Trade/Service Mark \_\_\_\_\_
- Merger File \_\_\_\_\_
- Art. of Amend. File Cert \_\_\_\_\_
- RA Resignation \_\_\_\_\_
- Dissolution / Withdrawal \_\_\_\_\_
- Annual Report / Reinstatement \_\_\_\_\_
- Cert. Copy \_\_\_\_\_
- Photo Copy \_\_\_\_\_
- Certificate of Good Standing \_\_\_\_\_
- Certificate of Status \_\_\_\_\_
- Certificate of Fictitious Name \_\_\_\_\_
- Corp Record Search \_\_\_\_\_
- Officer Search \_\_\_\_\_
- Fictitious Search \_\_\_\_\_
- Fictitious Owner Search \_\_\_\_\_
- Vehicle Search \_\_\_\_\_
- Driving Record \_\_\_\_\_
- UCC 1 or 3 File \_\_\_\_\_
- UCC 11 Search \_\_\_\_\_
- UCC 11 Retrieval \_\_\_\_\_
- Courier \_\_\_\_\_

FILED  
00 JAN 20 PM 12:21  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

RECEIVED  
00 JAN 20 AM 10:06  
LEGISLATIVE DIVISION OF CORPORATIONS  
TALLAHASSEE, FLORIDA

G. COULLETTE JAN 20 2000

Signature \_\_\_\_\_

Requested by: CD

Name \_\_\_\_\_

Date 1-20-00

Time 11:00

Walk-In \_\_\_\_\_

Will Pick Up \_\_\_\_\_

AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
PALM PLAZA OF MIAMI, INC.

FILED  
00 JAN 20 PM 12:27  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

I, the undersigned Vice President and Secretary of this corporation under Florida Statute 607, as amended, adopt the following Articles of Incorporation, which were approved and accepted by the shareholders of the corporation on the 13th day of January, 2000.:

ARTICLE I - NAME

The name of this corporation is PALM PLAZA OF MIAMI, INC., a Florida corporation.

ARTICLE II - DURATION

This corporation shall have perpetual existence commencing on the date of filing of these Amended and Restated Articles with the Secretary of State, State of Florida.

ARTICLE III - PURPOSE

The sole purpose for which the corporation is formed is limited to (i) owning, holding, selling, leasing, transferring, exchanging, operating and managing the Palm Plaza Shopping Center, located at 7901 NW 2nd Street, Miami FL 33126, legally described as follows:

Tract A, less the South 150 feet of the East 155 feet of MERUELO SUBDIVISION, according to the plat thereof, as recorded in Plat Book 130, page 88 of the Public Records of Miami-Dade County, Florida (the "Property");

(ii) enter into a Loan Assumption Agreement pursuant to which the corporation shall assume that certain loan in the original principal amount of \$5,000,000.00 executed by Meruelo Enterprises, a Florida General Partnership, in favor of Amresco Capital, L.P. and secured by that certain Florida Mortgage Financing Statement and Assignment of Leases and Rents, dated as of November 14, 1997 and recorded in Official Records Book 17871, page 4264, Public Records, Miami-Dade County, Florida, as assigned to Amresco Commercial Mortgage Funding, L.P. and further assigned to LaSalle Bank, National Association, formerly known as LaSalle National Bank, as trustee for Mortgage Capital Funding, Inc. Multi-Family/Commercial Mortgage Pass Through Certificates Series 1998-MC1 by reason of Assignment of Mortgage and Assignment of Leases and Rents, dated as of November 14, 1997 and recorded in Official Records Book 17871, page 4320, Public Records, Miami-Dade County, Florida (the "First Mortgage") with LaSalle Bank National Association, formerly known as LaSalle National Bank, as trustee for Mortgage Capital Funding, Inc. Multi-Family/Commercial Mortgage Pass Through Certificates Series 1998-MC1 ("Lender"), and (iii) to engage in any activity and to exercise any powers permitted to the corporation under the laws of the State of Florida that are incident, necessary and appropriate to accomplishing the foregoing.

ARTICLE IV - INITIAL REGISTERED OFFICE, AGENT AND PRINCIPAL PLACE OF BUSINESS

The name of the initial registered agent of this corporation is GARY V. SMITH, ESQUIRE, and the street address of the initial registered agent of this corporation is Lyons and Smith, P.A., 1230 NW 7 Street, Miami, Florida. The initial principal place of business and

mailing address of the corporation is C/O Capital Development & Investment Corp., 2150 Coral Way, Sixth Floor, Miami, FL 33145.

#### ARTICLE V - CAPITAL STOCK

This corporation is authorized to issue 500 shares of ONE AND 00/100 Dollar par value common stock, which shall be designated "Common Share", fully paid and non-assessable, all of which shall be common stock, and the same shall be issued and sold for such consideration as may be fixed by the Board of Directors hereof. Said shares of stock shall be issued, sold, or transferred only in accordance with the By-Laws of the corporation as the corporation may from time to time make, with a lien at all times reserving in favor of the corporation for any indebtedness which may be due at any time by the holders of same to the corporation, and such lien shall be superior to all liens of any character, and all assignments and transfers of stock of this corporation shall be subject thereto.

#### ARTICLE VI - 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 it 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 VII - INITIAL BOARD OF DIRECTORS

This corporation shall have 2 Director(s) initially. The number of Directors may be either increased or diminished from time to time in accordance with the By-Laws, but shall never be less than one. The name and address of each initial Director of this corporation is:

<u>Name</u>	<u>Address</u>
JAVIER LARTITEGUI	C/O Capital Development & Investment Corp., 2150 Coral Way, Sixth Floor, Miami, FL 33145
HECTOR LOVIO	C/O Capital Development & Investment Corp., 2150 Coral Way, Sixth Floor, Miami, FL 33145

#### ARTICLE VIII - LIMITATION OF POWERS

1. Notwithstanding any other provision of these Articles of Incorporation and any provision of law that otherwise so empowers the corporation, so long as the First Mortgage on the Property is outstanding, the Corporation may not, without the prior written consent of the holder of the First Mortgage, do any of the following:

a) engage in any business or activity other than those set forth in Paragraph 2 of this Certificate of Incorporation; or

b) incur any indebtedness or assume or guaranty any indebtedness.

2. So long as the First Mortgage is outstanding, the Corporation may not do any of the following:

a) dissolve or liquidate, in whole or in part;

b) consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity;

c) amend or cause to be amended the organizational documents of the corporation with respect to changing the sole purpose of the corporation or the separateness covenants contained therein; or

d) take any action that might cause the corporation to become insolvent.

3. So long as the First Mortgage is outstanding, the board of directors of the corporation (the "Board of Directors") may not do any of the following without the affirmative vote of 100% of the members 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;

c) file a petition seeking, or consent to, reorganization or relief under any applicable federal or state law relating to bankruptcy;

d) seek or consent to the appointment of a receiver, liquidator, conservator, assignee, trustee, sequestrator, custodian or any other similar official of the Corporation or a substantial part of its properties;

e) make any assignment for the benefit of creditors;

f) admit in writing its inability to pay its debts generally as they become due;

g) otherwise seek relief under any laws relating to the relief from debts or the protection of debtors generally;

h) take any corporation action in furtherance of any of the preceding actions;

i) engage in transactions with affiliates; or

j) except as otherwise provided in paragraph 2(d) hereof, amend the organizational documents of the corporation.

#### ARTICLE IX - DUTIES OF THE CORPORATION

1. The Corporation shall:

a) maintain books and records separate from any other person or entity;

b) maintain its bank accounts separate from any other person or entity;

c) not commingle its assets with those of any other person or entity and hold all of its assets in its own name;

d) conduct its own business in its own name;

e) maintain separate financial statements, showing its assets and liabilities

separate and apart from those of any other person or entity;

- f) pay its own liabilities and expenses only out of its own funds;
- g) as appropriate for the organizational structure of the corporation, observe all corporate and other organizational formalities;
- h) maintain an arm's length relationship with its affiliates and enter into transactions with affiliates only on a commercially reasonable basis;
- i) pay the salaries of its own employees from its own funds;
- j) maintain a sufficient number of employees in light of its contemplated business operations;
- k) not guarantee or become obligated for the debts of any other entity or person;
- l) not hold out its credit as being available to satisfy the obligations of any other person or entity;
- m) not acquire the obligations or securities of its affiliates or owners, including partners, members or shareholders, as appropriate;
- n) not make loans to any other person or entity or buy or hold evidence of indebtedness issued by any other person or entity (except for cash and investment-grade securities);
- o) allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate;
- p) use separate stationery, invoices and checks bearing its own name;
- q) not pledge its assets for the benefit of any other person or entity;
- r) hold itself out as a separate entity;
- s) correct any known misunderstanding regarding its separate identity;
- t) not identify itself as a division or part of any other person or entity; and
- u) maintain adequate capital in light of its contemplated business operations.

#### ARTICLE X - BY LAWS

The power to adopt, alter, amend or repeal By-Laws shall be vested in the Board of Directors and the Shareholders.

#### ARTICLE XI - CUMULATIVE VOTING

At each election for directors, every shareholder entitled to vote at such election shall have the right to cumulate his votes by giving one candidate as many votes as the number of directors to be elected at that time, multiplied by the number of his shares,

or by distributing such votes on the same principle among any number of such candidates.

#### ARTICLE XII - CALLING OF SPECIAL MEETINGS

Special Meetings of Shareholders may be called by anyone of the persons or groups below:

- a) The Board of Directors.
- b) The Holders of not less than one-tenth of all the share entitled to vote at the meeting.
- c) Such other persons or groups as may be authorized in the Articles of Incorporation or the By-Laws.

#### ARTICLE XIII - SHAREHOLDERS QUORUM AND VOTING

A majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at the meeting of shareholders. If a quorum is present, the affirmative vote of a majority of the shares represented at the meeting and entitled to vote on the subject matter, shall be the act of the shareholders.

#### ARTICLE XIV - POWERS

This corporation shall have all of the corporate powers enumerated in the Florida General Corporation Act, as long as they do not conflict with the limiting provisions contained in these Restated and Amended Articles of Corporation.

#### ARTICLE XV - LIMITATIONS ON TRANSFER

1. So long as the First Mortgage is outstanding, no transfer of any direct or indirect ownership interest in the Corporation such that the transferee owns more than a 49% interest in the corporation (or such other interest as specified in the First Mortgage) may be made unless such transfer is conditioned upon the delivery of an acceptable Non-Consolidation Opinion (as defined below) to the holder of the First Mortgage and to any nationally recognized rating agency which has been requested by the holder of the First Mortgage or any transferee of such holder to rate any issue of securities issued in respect of a pool of mortgage loans which includes the loan secured by the First Mortgage (the "Certificates") and which is then rating, or expected to rate, such Certificates (individually, a "Rating Agency") concerning, as applicable, the Corporation, the new transferee and/or their respective owners.

For purposes of this paragraph, "Non-Consolidation Opinion" shall mean an opinion of counsel to the Corporation (reasonably satisfactory to the holder of the First Mortgage and each Rating Agency in form and substance, from counsel reasonably satisfactory to the holder of the First Mortgage and each Rating Agency and containing assumptions, limitations and qualifications customary for opinions of such type) to the effect that a court of competent jurisdiction in a proceeding under the United States Bankruptcy Code would not consolidate the assets and liabilities of the Corporation with those of any shareholder or affiliate thereof which became a debtor under the United States Bankruptcy Code, and if applicable to the Corporation, that any such transfer would not be a fraudulent conveyance under the United States Bankruptcy Code.

**ARTICLE XVI - DIRECTOR QUORUM AND VOTING**

A majority of the Directors shall constitute a quorum for a meeting of Directors. If a quorum is present, the affirmative vote of a majority of the directors present, or, if a director or directors have abstained from voting because of an interest in the matter to be voted upon, the affirmative vote of a majority of the directors present and voting shall be the act of the Board of Directors.

**ARTICLE XVII - MEETING BY CONFERENCE TELEPHONE**

Members of the Board of Directors may participate in meetings of the Board of Directors by means of conference telephone as provided by law.

**ARTICLE XVIII - ACTION BY DIRECTORS WITHOUT A MEETING**

The Directors of this corporation may take action by unanimous written consent as provided by law.

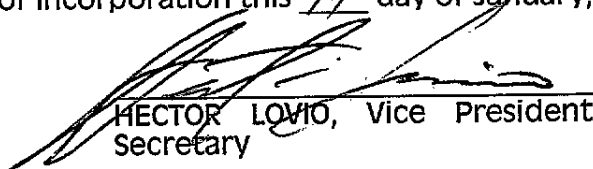
**ARTICLE XIX - INDEMNIFICATION**

The Corporation shall indemnify any officers or directors, or any former officers or directors, to the full extent permitted by law.

**ARTICLE XX - AMENDMENT**

So long as the First Mortgage is outstanding, without the prior written consent of the holder of the First Mortgage and 100% of the members of the Board of Directors, the Corporation may not amend, alter, change or repeal Articles III, VIII, IX and XV of these Articles of Incorporation.


IN WITNESS WHEREOF, the undersigned Vice President and Secretary has executed these Amended and Restated Articles of Incorporation this 19 day of January, 2000.

  
HECTOR LOVIO, Vice President and Secretary

STATE OF FLORIDA  
COUNTY OF MIAMI-DADE

The foregoing instrument was sworn to and subscribed before me in the County and State last aforesaid, this 19 day of January, 2000 by HECTOR LOVIO, as Vice President and Secretary of PALM PLAZA OF MIAMI, INC., a Florida corporation, who personally appeared before me at the time of notarization and who is personally known to me or who has produced (type of identification) \_\_\_\_\_ as identification.

My Commission Expires:

  
NOTARY PUBLIC (SEAL)  
(print name) \_\_\_\_\_

