

FEB-17-2004

2:05

305 933 5535

333 5535

P.01/06

P00000065454

Florida Department of State
Division of Corporations
Public Access System

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.

((H04000035132 3)))

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 : TURNBERRY ASSOCIATES
Account Number : I19990000201
Phone : (305)933-5505
Fax Number : (305)933-5535

BASIC AMENDMENT

M-1, INC.

Certificate of Status	0
Certified Copy	0
Page Count	01
Estimated Charge	\$35.00

RECEIVED

04 FEB 18 AM 7:20

DIVISION OF CORPORATIONS

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
2004 FEB 18 AM 9:43

Electronic Filing Menu

Corporate Filing

Public Access Help

Amendment
02/18/04

**ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
M-1, INC.**

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
2004 FEB 18 AM 9:43

The undersigned, desiring to amend the Articles of Incorporation of M-1, Inc., a Florida corporation (the "Corporation"), pursuant to Section 607.1006 of the Florida Business Corporation Act, as amended, does hereby certify:

FIRST: Article ELEVENTH is hereby inserted immediately following Article TENTH as follows:

"ELEVENTH: Notwithstanding any other section or provision of the Articles of Incorporation to the contrary, until such time as the Obligations (as defined in that certain Second Amended and Restated Mortgage and Security Agreement, dated as of February 18, 2004 by and between M-1 Limited Partnership, a Florida limited partnership (the "Partnership"), and The Prudential Insurance Company of America (the "Lender") (as amended, modified or supplemented from time to time the "Mortgage")) shall be paid in full, and as required by the Mortgage, the Corporation shall perform and comply with the following:

(a) Notwithstanding Article SEVENTH to the contrary, the Corporation will not engage in any business other than owning partnership interests in the Partnership and acting as one of its General Partners (as defined in that certain Amended and Restated Limited Partnership Agreement, dated as of February 12, 2001, governing the Partnership (as the same may have heretofore been and be hereafter amended, modified or supplemented from time to time in accordance with its terms, the "Partnership Agreement")) and the Corporation will conduct and operate its business as presently conducted and operated.

(c) The Corporation will not enter into any contract or agreement with any Affiliate of the Corporation, any constituent party of the Corporation or any Affiliate of any constituent party, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party. For the purposes of this Article ELEVENTH only, "Affiliate" means, as to any Person (as used in this Article ELEVENTH only, as defined in the Mortgage), any other Person that, directly or indirectly, owns more than forty percent (40%) of, is in control of, is controlled by or is under common ownership or control with such Person or is a director or officer of such Person or of an Affiliate of such person. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

(d) The Corporation will not incur any Indebtedness other than
(i) Indebtedness related to or arising in connection with the Obligations, (ii) unsecured trade

H040000351323

payables and operational debt not evidenced by a note and in an aggregate amount not exceeding \$500,000.00 at any one time and (iii) Indebtedness incurred in the financing of equipment and other personal property used on the Property (as defined in the Mortgage) with aggregate annual payments not exceeding \$60,000.00 in the aggregate; provided that any Indebtedness incurred pursuant to subclauses (ii) and (iii) shall be (x) not more than sixty (60) days past due and (y) incurred in the ordinary course of business. No Indebtedness other than the Obligations may be secured (subordinate or pari passu) by the Property. For the purposes of this Article ELEVENTH only, the term "Indebtedness" shall mean, for any Person without duplication: (i) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred purchase price of property for which such Person or its assets is liable, (ii) all unfunded amounts under a loan agreement, letter of credit, or other credit facility for which such Person would be liable if such amounts were advanced thereunder, (iii) all amounts required to be paid by such Person as a guaranteed payment to partners or a preferred or special dividend, including any mandatory redemption of shares or interest, (iv) all indebtedness guaranteed by such Person, whether directly or indirectly, (v) all obligations under leases that constitute capital leases for which such Person is liable, and (vi) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person is liable contingently or otherwise, as obligor, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss.

(e) The Corporation will not make any loans or advances to any third party (including any Affiliate or constituent party), and shall not acquire obligations or securities of its Affiliates.

(f) The Corporation will remain solvent and the Corporation will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

(g) The Corporation will do all things necessary to observe organizational formalities and preserve its existence, and the Corporation will not, nor will the Corporation permit any constituent party to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents of the Corporation or such constituent party without the prior consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed.

(h) The Corporation will maintain all of its books, records, financial statements and bank accounts separate from those of its Affiliates and any constituent party. The Corporation's assets will not be listed as assets on the financial statement of any other entity. The Corporation will file its own tax returns and will not file a consolidated federal income tax return with any other Person. The Corporation shall maintain its books, records, resolutions and agreements as official records.

(i) The Corporation 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 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 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 bearing its own name.

(j) The Corporation 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.

(k) Neither the Corporation nor any constituent party will seek or effect the dissolution, winding up, liquidation, consolidation or merger, whether in whole or in part, of the Corporation.

(l) The Corporation will not commingle the funds and other assets of the Corporation with those of any Affiliate or constituent party or any other Person, and will hold all of its assets in its own name.

(m) The Corporation 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 assets from those of any Affiliate or constituent party or any other Person.

(n) The Corporation will not guarantee or become obligated for the debts of any other Person and does not and will not hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other Person, except for debts permitted to be guaranteed by the Loan Documents (as defined in the Mortgage).

(o) The Corporation shall be a corporation whose sole asset is its interest in the Partnership and will at all times comply with each of the covenants contained in this Article ELEVENTH, and as the General Partner of the Partnership, will at all times cause the Partnership to comply, with each of the covenants contained in Section 12.1 of the Partnership Agreement.

(p) The Corporation shall at all times cause there to be at least two (2) duly appointed members of the board of directors (each, an "Independent Director") of the Corporation reasonably satisfactory to Lender who shall not have been at the time of such individual's appointment or at any time while serving as a director of the Corporation, and may not have been at any time during the preceding five (5) years (i) a stockholder, director (other than as an Independent Director), officer, employee, partner, attorney or counsel of the Corporation, the Partnership or any Affiliate of either of them, (ii) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with the Corporation, the Partnership or any Affiliate of either of them, (iii) a Person or other entity controlling or under common control with any such stockholder, partner, attorney, counsel, customer, supplier or other Person, or (iv) a member of the immediate family of any such stockholder, director, officer, employee, partner, attorney, counsel, customer, supplier or other Person. As used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

(q) The Corporation shall not and shall not cause the Partnership to, without the unanimous consent of all of the members of the board of directors of the Corporation, including the Independent Directors: (i) file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding, institute any proceedings under any applicable insolvency law or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally; (ii) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for itself or any other entity; (iii) make an assignment of its assets for the benefit of its creditors or an assignment of the assets of another entity for the benefit of such other entity's creditors; or (iv) take any action in furtherance of the foregoing.

(r) The Corporation shall not cause or permit the board of directors of the Corporation to take any action which, under the terms of the Articles of Incorporation, by-laws or any voting trust agreement with respect to any common stock, requires a vote of the board of directors of the Corporation unless at the time of such action there shall be at least two (2) members who are each an Independent Director.

(s) The Corporation shall conduct its business so that the assumptions made with respect to the Corporation in the Insolvency Opinion (as defined in the Mortgage) shall be true and correct in all respects. In connection with the foregoing, the Corporation will comply with or cause the compliance with, (i) all of the facts and assumptions (whether regarding the Corporation or any other Person) set forth in the Insolvency Opinion, (ii) all the covenants in this Article ELEVENTH, and (iii) all the organizational documents of the Corporation and the Partnership.

(t) The Corporation will not permit any Affiliate or constituent party independent access to its bank accounts.

(u) The Corporation shall pay the salaries of its own employees (if any) from its own funds and maintain a sufficient number of employees (if any) in light of its contemplated business operations.

(v) The Corporation shall compensate each of its consultants and agents from its funds for services provided to it and pay from its own assets all obligations of any kind incurred."

SECOND: These Articles of Amendment were approved by the shareholders on February 18, 2004. The number of votes cast for these Articles of Amendment was sufficient for approval.

[Remainder of page left blank intentionally]

IN TESTIMONY WHEREOF, the undersigned officer of the above named corporation has hereunto set his hand this 18 day of February, 2004.



Name: Eugene Kessler
Title: President

H040000351323