

P97000045653

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.

((H05000290152 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 : C T CORPORATION SYSTEM
Account Number : FCA000000023
Phone : (850) 222-1092
Fax Number : (850) 878-5926

*please refile
and backdate to
12/21/05
Thanks!*

BASIC AMENDMENT

SBA TOWERS, INC.

Certificate of Status	0
Certified Copy	0
Page Count	12
Estimated Charge	\$35.00

RECEIVED
05 DEC 22 AM 8:00
DIVISION OF CORPORATIONS

FILED
05 DEC 21 AM 9:03
TALLAHASSEE, FLORIDA

Electronic Filing Menu

Corporate Filing

Public Access Help

*Amers
8,*

12/22/2005 16:43 8588785926
850-205-0381

12/22/2005 4:23

OT CORPORATION SYSTM
PAGE 001/001 Florida Dept of State

PAGE 02/13



December 22, 2005

FLORIDA DEPARTMENT OF STATE
Division of Corporations

SBA TOWERS, INC.
5900 BROKEN SOUND PKWY NW
ATTN: LEGAL DEPT.
BOCA RATON, FL 33487US

SUBJECT: SBA TOWERS, INC.
REF: P970000045653

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 entitle your document Amended and Restated Articles of Incorporation.

If you have any questions concerning the filing of your document, please call (850) 245-6878.

Alan Crum
Document Specialist

FAX Aud. #: H05000290152
Letter Number: 205A00073278

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
SBA TOWERS, INC.

FILED
05 DEC 21 AM 9:03
STATE
TALLAHASSEE, FLORIDA

The present name of the corporation is SBA Towers, Inc. The corporation was incorporated under the name "SBA Towers, Inc." by the filing of its original Articles of Incorporation with the Secretary of State of the State of Florida on May 22, 1997. These Articles of Amendment to the Articles of Incorporation (referred to herein as these "Articles") of the corporation, which both restate and amend the provisions of the corporation's Articles of Incorporation, were duly adopted in accordance with the provisions of Section 607.1006 of the Florida Statutes by the unanimous written consent of the Board of Directors and the sole shareholder of SBA Towers, Inc. The Articles of Incorporation of the corporation are hereby amended and restated to read in their entirety as follows:

ARTICLE I. The name of the corporation is SBA Towers, Inc. (the "Corporation").

ARTICLE II. The address of the Corporation's principal place of business and mailing address in the State of Florida is 5900 Broken Sound Parkway N.W., Boca Raton, Florida 33487. The name and address of the registered agent is CT Corporation System, 1200 South Pine Island Road, Plantation, Florida, 33324.

ARTICLE III. Definitions and Rules of Construction.

(a) When used in these Articles, the following terms not otherwise defined have the following meanings (and where not defined herein, have the meanings ascribed to them in the Credit Agreement):

(i) "Affiliate" means in relation to any Person, any other Person: (i) directly or indirectly controlling, controlled by, or under common control with, the first Person; (ii) directly or indirectly owning or holding fifty percent (50%) or more of the voting stock or other equity interest in the first Person; or (iii) fifty percent (50%) or more of whose voting stock or other equity interest is directly or indirectly owned or held by the first Person..

(ii) "Borrower Party" means SBA Senior Finance II LLC, a Florida corporation.

(iii) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. "Controlling" and

"Controlled" shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, 50% or more of the ownership interests of such Person.

(iv) "Credit Agreement" means the Agreement by and among the Borrower, the Lenders, General Electric Capital Corporation ("GECC"), as Administrative Agent ("Agent"), TD Securities (USA) LLC, as Co-Lead Arranger and Syndication Agent, DB Structured Products, Inc., as Co-Documentation Agent, Lehman Commercial Paper Inc., as Co-Documentation Agent, and GE Capital Markets, Inc., as Lead Arranger and Bookrunner.

(v) "Directors" means the persons elected to the Board of Directors from time to time, including the Independent Directors.

(vi) "Encumbrance" means any lien, mortgage, security interest, pledge, restriction on transferability, defect of title, option or other claim, charge or encumbrance of any nature whatsoever on any property or property interest.

(vii) "Independent Director" has the meaning specified in ARTICLE VIII.

(viii) "Lenders" has the meaning specified in the Credit Agreement.

(ix) "Loan Documents" means the Credit Agreement, the Security Documents (as defined in the Credit Agreement), the Applications (as defined in the Credit Agreement) and the Notes (as defined in the Credit Agreement), as the same may be amended or modified from time to time.

(x) "Obligations" shall mean the unpaid principal of and interest on (including, without limitation, interest accruing after the maturity of the Revolving Credit Loans, Reimbursement Obligations and Swap Related Reimbursement Obligations (all as defined in the Credit Agreement) and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post petition interest is allowed in such proceeding), the Revolving Credit Loans and all other obligations and liabilities of the Borrower to the Agent or to any Lender, Qualified Counterparty or GE Capital, where direct or indirect, absolute or contingent, due or to become due, or not existing or hereinafter incurred, which may arise under, out of, or in connection with the Credit Agreement, or other document or agreement in connection therewith.

(xi) "Person" means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

(xii) "Property" has the meaning set forth in ARTICLE IV, Section (a)(i).

(xiii) "Tenant" means a tenant that leases site space pursuant to a Tenant Lease.

(xiv) "Tenant Lease" means a lease or license pursuant to which the Corporation leases or licenses Site Space to companies involved in the provision of communication services.

(b) Definitions in these Articles apply equally to both the singular and plural forms of the defined terms. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The terms "herein," "hereof" and "hereunder" and other words of similar import refer to these Articles as a whole and not to any particular Section, paragraph or subdivision. The Section titles appear as a matter of convenience only and shall not affect the interpretation of these Articles. All Section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of these Articles.

ARTICLE IV. Purposes.

(a) The purposes to be conducted or promoted by the Corporation shall be to engage solely in the following activities:

(i) to own, lease and manage tower sites and equipment, inventory, systems, software and other assets incidental to or necessary or convenient for the operation thereof (the "Property");

(ii) to acquire and/or dispose of tower sites and/or any rights therein (including ownership, management, easement, lease and sublease rights), and/or equipment, inventory, systems, software and other assets incidental to or necessary or convenient for the operation thereof;

(iii) to contract with any manager or service provider for the leasing, management, operation and maintenance of the tower sites or the performance of other services relating thereto;

(iv) to enter into and perform under leases, licenses, purchase agreements and similar contracts with third parties in relation to properties that are, or are to become, tower sites and to perform the obligations of the Corporation thereunder;

(v) to enter into and perform under subleases, site management agreements, easements and ground leases pursuant to which the Corporation manages wireless communication sites owned by third parties;

(vi) subject to ARTICLE X, Section (d)(ii), to enter into loan agreements and/or issue and sell bonds, notes, debt or equity securities, obligations, and other securities and instruments to finance its activities, to pledge any and all of its properties in connection with the foregoing, and to enter into, perform under and comply with any agreements incidental or necessary thereto;

(vii) to obtain any licenses, consents, authorizations or approvals from any federal, state or local governmental authority, including but not limited to the Federal

Communications Commission and the Federal Aviation Administration, incidental to or necessary or convenient for the conduct of its business as described above; and

(viii) to engage in and perform any lawful act or activity and to exercise any powers permitted to corporations organized under the laws of the State of Florida that, in either case, are incidental to and necessary, convenient or advisable for the accomplishment of the above mentioned purposes; and

(b) Upon approval by the Board of Directors of any matter permitted under paragraph (a) above, each of the Directors and officers of the Corporation is authorized, empowered and directed, for and on behalf of the Corporation, to take any and all actions, to negotiate for and enter into agreements and amendments to agreements, to perform all such acts and things, to execute, file, deliver or record in the name and on behalf of the Corporation, all such certificates, instruments, agreements or other documents, and to make all such payments as they, in their judgment, or in the judgment of any one or more of them, may deem necessary, advisable or appropriate in order to carry out the purpose and intent of, or consummate the transactions contemplated by, the resolutions of the Board of Directors which approve such matters and/or all of the transactions contemplated therein or thereby, the authorization therefor to be conclusively evidenced by the taking of such action or the execution and delivery of such certificates, instruments, agreements or documents.

(c) The Corporation shall not engage in any activities other than as permitted under this ARTICLE IV.

ARTICLE V. Powers. Subject to ARTICLE X, the Corporation, and the Board of Directors and the Officers of the Corporation, (i) shall have and exercise all powers necessary, convenient or incidental to accomplish its purposes as set forth in ARTICLE IV and (ii) shall have and exercise all of the powers and rights conferred upon corporations formed pursuant to the Florida Statutes.

ARTICLE VI. The total number of shares of stock which the Corporation shall have authority to issue is 1,000. All such shares are to be common stock, par value of \$.01 per share, and are to be of one class.

ARTICLE VII. Unless and except to the extent that the by-laws of the Corporation (the "By-Laws") shall so require, the election of Directors of the Corporation need not be by written ballot.

ARTICLE VIII. Board of Directors.

(a) Subject to ARTICLE X, the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors of the Corporation (the "Board of Directors").

(b) The number of Directors of the Corporation shall be as from time to time fixed by, or in the manner provided in the By-Laws of the Corporation provided, however, that at all times while any Obligations are outstanding the Board of Directors shall include at least two Directors who are "Independent Directors". An Independent Director shall mean a Director of

the Corporation who is not at the time of appointment and has not been at any time during the preceding five (5) years:

(i) a stockholder, director (other than as an independent director of the Corporation), officer, employee, partner, attorney or counsel or a stockholder having the beneficial ownership of more than 5% of the issued and outstanding equity interests of the Corporation or any of its Affiliates (except that such individual may be an independent director of any of its Affiliates) or a direct or indirect legal or beneficial owner in the Corporation or any of its Affiliates,

(ii) a customer, creditor, manager, contractor, supplier or other Person who derives any of its purchases or revenues from its activities with the Corporation or any of its Affiliates (other than a company that provides professional independent directors and which also may provide other ancillary corporate, partnership, company or trust services to the Corporation or its Affiliates in the ordinary course of its business),

(iii) a stockholder, creditor, manager, contractor, partner, customer, employee, officer, director, or supplier of another entity controlling, directly or indirectly, or under common control with the Corporation or any of its Affiliates, or

(iv) a member of the immediate family of any such individual.

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.

The initial Independent Directors are Taide Baez and Elena Davila.

To the fullest extent permitted by law, each Independent Director shall consider only the interests of the Corporation, including its respective creditors, in acting or otherwise voting on the matters referred to in ARTICLE X, Section (c).

Either or both of the Independent Directors may be removed by the stockholder or stockholders at any time; provided, however, that no resignation or removal of an Independent Director shall be effective until a successor Independent Director is appointed and such successor shall have accepted his or her appointment as an Independent Director by a written instrument. In the event of a vacancy in the position of either Independent Director, the stockholder or stockholders shall, as soon as practicable, appoint a successor Independent Director.

All right, power and authority of the Independent Directors shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in these Articles. Neither Independent Director shall at any time serve as trustee in bankruptcy for the Corporation or any Affiliate of the Corporation.

ARTICLE IX. In furtherance and not in limitation of the powers conferred by the laws of the State of Florida, the Board of Directors of the Corporation is expressly authorized to make, alter and repeal the By-Laws that are not inconsistent with these Articles, subject to the

power of the stockholders of the Corporation to alter or repeal any By-Law whether adopted by them or otherwise.

ARTICLE X. Limitations on the Corporation's Activities.

(a) This ARTICLE X is being adopted in order to comply with certain provisions required in order to qualify the Corporation as a "special purpose" entity.

(b) The Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in these Articles, and other provisions authorized by the laws of the State of Florida at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, Directors or any other persons whomsoever by and pursuant to these Articles in their present form or as hereafter amended are granted subject to the rights reserved in this ARTICLE X; provided that while any Obligations are outstanding, none of Articles I, IV, V, VI, VIII, X and XI and any definitions contained in ARTICLE III to the extent that such definitions are used in the foregoing Articles (the "Special Purpose Provisions"), or any other provision of the Articles or any other document governing the organization, management or operation of the Corporation shall be amended without the unanimous vote of the entire Board of Directors without any vacancies, including each Independent Director.

(c) To the fullest extent permitted by applicable law, notwithstanding any other provision of these Articles or any other document governing the organization, management or operation of the Corporation, none of the Corporation or the Board of Directors or any officer of the Corporation or any other Person shall be authorized or empowered, nor shall they permit the Corporation, to take any of the following actions without the unanimous written consent of the entire Board of Directors (including each Independent Director) (and no such actions shall be taken or authorized unless there are at least two Independent Directors then serving in such capacity) while any Obligations are outstanding:

(i) file or consent to the filing of any bankruptcy, insolvency or reorganization petition naming the Corporation as debtor or otherwise institute bankruptcy or insolvency proceedings by or against the Corporation or otherwise seek with respect to the Corporation 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, conservator, assignee, trustee, sequestrator, custodian or any similar official for the Corporation or all or any portion of any of its properties,

(iii) make or consent to any assignment for the benefit of the Corporation's creditors,

(iv) admit in writing the inability of the Corporation to pay its debts generally as they become due,

(v) consent to substantive consolidation with any shareholder of the Corporation or any Affiliate,

(vi) sell, exchange, lease or otherwise transfer all or substantially all of the assets of the Corporation, or

(vii) to the fullest extent permitted by law, dissolve, liquidate or wind up the Corporation or approve of any proposal relating thereto.

(d) The Board of Directors shall cause the Corporation to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises; provided, however, that the Corporation shall not be required to preserve any such right or franchise if the Board of Directors shall determine that the preservation thereof is no longer desirable for the conduct of its business and that the loss thereof is not disadvantageous in any material respect to the Lenders. The Corporation shall, and the Board of Directors shall cause the Corporation to:

(i) Except as permitted by the Loan Documents, not directly or indirectly, remain liable, create, incur, assume, guarantee, or otherwise become or remain directly or indirectly liable with respect to any indebtedness other than indebtedness and any liabilities incurred in the ordinary course of the Corporation's business that are related to the ownership or operation of the tower sites and are expressly permitted under the Loan Documents. As used herein, "indebtedness" means, at any time, without duplication: (1) 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, (2) all unfunded amounts under a loan agreement, letter of credit (unless secured in full by Dollars), or other credit facility for which such Person would be liable if such amounts were advanced thereunder, (3) 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 interests but not any preferred return or special dividend paid solely from, and to the extent of, excess cash flow after the payment of all operating expenses, capital improvements and debt service on all Indebtedness, (4) all obligations under leases that constitute capital leases for which such Person is liable, and (5) 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, and (6) any guaranty of the Corporation with respect to liabilities of a type described in any of clauses (1) through (5) hereof;

(ii) Except as permitted by the Loan Documents, not pledge its assets to secure the obligations of any other Person, or make or permit to remain outstanding any loan or advances to any other Person;

(iii) Pay its own liabilities, indebtedness, obligations and expenses from its own separate assets as the same shall become due;

(iv) Maintain its own books and records and bank accounts separate from those of any other Person and maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person and not have its assets listed on any financial statement of any other Person; provided, however, that the Corporation's assets may be included in a consolidated financial statement of its Affiliate provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the Corporation from such Affiliate and to indicate that the Corporation's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (ii) such assets shall also be listed on the Corporation's own separate balance sheet;

(v) Be, and at all times hold itself out to the public and all other Persons as, a legal entity separate and distinct from any other Person (including any Affiliate), and not identify itself as a department or division of any Person and correct any known misunderstandings regarding its existence as a separate legal entity;

(vi) Pay the salaries of its own employees and the fees and expenses of its agents, if any, and at all times have sufficient personnel and/or duly compensated agents to run its business and operations (it being understood that the Corporation will obtain administrative services from Affiliates and is not likely to need any employees itself);

(vii) Allocate fairly and reasonably any overhead for shared office space, or maintain a separate office (a) which if leased from any Affiliate of the Corporation will be on terms no more or less favorable to the Company than could be obtained in a comparable arm's-length transaction with an unaffiliated Person and (b) which will be conspicuously identified as the Corporation's office so it can be easily located by outsiders;

(viii) Use separate stationery, invoices and checks bearing its own name and have separate telephone and facsimile numbers;

(ix) File its own tax returns with respect to itself (or consolidated tax returns, if applicable) as may be required under applicable law;

(x) Except as permitted by the Loan Documents, not commingle its funds assets with assets of any other Person;

(xi) 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 other Person;

(xii) Not guarantee any obligation of any Person, including any Affiliate or become obligated for the debts of any other Person or hold out its credit as being available to pay the obligations of any other Person;

(xiii) Conduct its business only in its own name through its own employees and agents and strictly comply with all organizational formalities necessary to maintain its separate existence;

(xiv) Observe the requirements of the Florida Statutes and the requirements of these Articles;

(xv) Maintain adequate capital in light of its contemplated business purpose, transactions and liabilities;

(xvi) Have its own Board of Directors separate from that of any other Person;

(xvii) Except for capital contributions or capital distributions properly reflected on the books and records of the Corporation, not enter into any transaction with an Affiliate of the Corporation except on terms that are intrinsically fair and not more or less favorable to the Corporation, as the case may be, than terms and conditions available at the time to the Corporation for comparable arm's-length transactions with unaffiliated Persons;

(xviii) Compensate its employees, if any, and agents from its own available funds for services provided to it and, in the event employees of the Corporation participate in pension, insurance and other benefit plans of any Affiliate, on a current basis reimburse the relevant Affiliate for its pro rata share of the costs thereof;

(xix) Not hold its credit or assets as being available to satisfy the obligations of any other Person;

(xx) Not acquire any securities of any of its Affiliates;

(xxi) Cause its Board of Directors to meet at least annually or act pursuant to written consent and keep minutes of such meetings and actions and observe all other Florida corporate formalities;

(xxii) Cause the Directors, Officers, agents and other representatives of the Corporation to act at all times with respect to the Corporation consistently and in furtherance of the foregoing and in the best interests of the Corporation;

(xxiii) To the fullest extent permitted by law, not engage in any dissolution, liquidation, consolidation, merger, sale or transfer of substantially all of its assets, other than such activities as are expressly permitted pursuant to the Loan Documents;

(xxiv) Except as permitted by the Loan Documents, not form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other) or own any equity interest in any other entity;

(xxv) Except as permitted by the Loan Documents, not own any asset or property other than the Property and incidental personal property necessary for the ownership or operation of the Property;

(xxvi) Except as permitted by the Loan Documents, not engage, directly or indirectly, in any business other than as required or permitted to be performed under ARTICLE IV or ARTICLE X(d); or

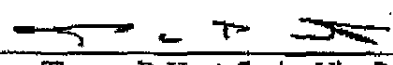
(xxvii) Comply with the provisions of these Articles.

Failure of the Corporation or the Board of Directors on behalf of the Corporation to comply with any of the foregoing covenants or any other covenants contained in these Articles shall not affect the status of the Corporation as a separate legal entity or the limited liability of the Directors.

ARTICLE XI Provided the Person proposed to be indemnified is not shown to have not satisfied the requisite standard of conduct for permissive indemnification by a corporation as specifically set forth in the applicable provisions of the Florida Business Corporation Act (currently Sections 607.0850(1) and (2) of the Florida Statutes), as may be amended from time to time, the Corporation shall indemnify its officers and Directors, and may indemnify its employees and agents, if any, from and against any and all of the expenses and liabilities incurred in defending a civil or criminal proceeding, or other matters referred to in or covered by said provisions, including advancement of expenses prior to the final disposition of such proceedings and amounts paid in settlement of such proceedings, both as to action in their official capacity and as to action in any other capacity while an officer, Director, employee or other agent. The indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any By-Law, agreement, vote of shareholders or disinterested Directors or otherwise. The indemnification provided herein shall continue as to a person who has ceased to be a Director, officer, employee or agent, and shall inure to the benefit of the heirs, the personal and other legal representatives of such person, and an adjudication of liability shall not affect the right to indemnification for those indemnified.

IN WITNESS WHEREOF, the undersigned has executed these Articles this 21st
day of December, 2005.

SBA Towers, Inc.

By: 

Name: Thomas P. Hunt, Senior Vice President
and General Counsel