

A03000001741

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TALLAHASSEE, FLORIDA
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J.D.



CORPORATION SERVICE COMPANY

ACCOUNT NO. : 072100000032

REFERENCE : 665518 7501230

AUTHORIZATION : *Patricia Pigato*

COST LIMIT : \$ 113.75

ORDER DATE : October 21, 2005

ORDER TIME : 2:18 PM

ORDER NO. : 665518-015

CUSTOMER NO: 7501230

FILED
05 OCT 21 PM 4:48
SEALING STATE
TALLAHASSEE, FLORIDA

DOMESTIC AMENDMENT FILING

NAME: AKU TIKI, LTD

EFFECTIVE DATE:

XX ARTICLES OF AMENDMENT
 RESTATED ARTICLES OF INCORPORATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY
 PLAIN STAMPED COPY
XX CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Susie Knight -- EXT# 2956

EXAMINER'S INITIALS: _____

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CLERK OF DISTRICT COURT
TALLAHASSEE, FLORIDA

**CERTIFICATE OF AMENDMENT TO CERTIFICATE OF LIMITED PARTNERSHIP
OF AKU TIKI, LTD**

LIMITED PARTNERSHIP

Aku Tiki, Ltd., a Florida limited partnership (Florida Document No. A030000001741) (the "Partnership"), whose certificate was filed with the Florida Department of State on December 15, 2003, pursuant to §620.109, Florida Statutes, adopts the following Certificate of Amendment to its Certificate of Limited Partnership.

1. **Purpose.** The Partnership's business and purpose shall consist solely of the acquisition, ownership, operation and management of the real estate project known as the Aku Tiki, bearing a street address of 2225 S. Atlantic Avenue, Daytona Beach Shores, Volusia County, Florida 32118, (the "Property") and such activities as are necessary, incidental or appropriate in connection therewith.

2. **Powers and Duties.** (a) Notwithstanding any other provisions of this Partnership Agreement, any contrary or inconsistent provision in the limited partnership certificate of the Partnership or any other document or instrument governing the affairs of the Partnership or any provision of law that otherwise so empowers the Partnership or any of the partners of the Partnership, so long as the loan in the initial principal amount of \$8,000,000.00 (the "Loan") and any other obligations secured by that certain Mortgage and other security agreements in favor of CitiGroup Global Financial Realty Corp. and/or its successors and assigns as their interest may appear (the "Mortgage") remain outstanding and not discharged in full, without the prior written consent of the holder of the Mortgage (the "Lender"), the general partner(s) of the Partnership (collectively, or individually, the "General Partner") and the Partnership shall have no authority to:

- (i) conduct its affairs in any manner contravening or inconsistent with the provisions of Paragraphs 1 through 5 of this Certificate of Amendment to the Certificate of Limited Partnership;
- (ii) dissolve or liquidate the Partnership or consent to any such dissolution or liquidation;
- (iii) sell or lease, or otherwise dispose of all or substantially all of the assets of the Partnership; or
- (iv) amend, modify or alter any of the provisions of Paragraphs 1 through 5 of this Certificate of Amendment to the Certificate of Limited Partnership;

(b) Notwithstanding any other provisions of this Partnership Agreement, any contrary or inconsistent provision in the limited partnership certificate of the Partnership or any other document or instrument governing the affairs of the Partnership or any provision of law that otherwise so empowers the Partnership, so long as the Loan or any other obligations secured by the Mortgage remains outstanding and not discharged in full, the General Partner and the Partnership shall have no authority, unless such action has been approved in writing by the General Partner and the unanimous vote of all the other partners of the Partnership, to file or consent to the filing of any voluntary or involuntary bankruptcy or insolvency petition with respect to the Partnership or otherwise initiate or consent to proceedings to have the Partnership adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Partnership, or file a petition seeking or consenting to reorganization or relief of the Partnership as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Partnership; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Partnership or of all or any substantial part of the properties and assets of the Partnership, or make any general assignment for the benefit of creditors of the Partnership, or admit in writing the inability of the Partnership to pay its debts generally as they become due or declare or effect a moratorium on the Partnership debt or take any partnership or corporate action in furtherance of any such action.

3. **Title to Partnership Property.** All property owned by the Partnership shall be owned by the Partnership as an entity and, insofar as permitted by applicable law, no partner of the Partnership shall have any ownership interest in any Partnership property in its individual name or right, and each Partner's partnership interest in the Partnership shall be personal property for all purposes. The foregoing provisions shall govern over any contrary or inconsistent provision in this Partnership

Agreement, the limited partnership certificate of the Partnership or any other document or instrument governing the affairs of the Partnership.

4. **Separateness/Operations Matters.** The Partnership has heretofore conducted and shall at all times hereafter conduct its business and operations in strict accordance and compliance with the following provisions:

- (a) the Partnership has not and shall not own any asset or property other than (i) the Property, and (ii) incidental personal property necessary for the ownership or operation of the Property;
- (b) the Partnership has not and shall not engage in any business or activity other than the ownership, management and operation of the Property and the Partnership has conducted and operated and will conduct and operate its business as presently conducted and operated;
- (c) the Partnership has not and shall not enter into or be a party to any transaction, contract or agreement with any guarantor of the debt secured by the Mortgage or any part thereof (a "Guarantor") or with any Affiliate, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with unrelated third parties (the term "Affiliate" shall mean any person or entity (i) which owns beneficially, directly or indirectly, any outstanding partnership interest, membership interest, shares or other equity in any General Partner's stock or any partnership interest in the Partnership, or (ii) which controls or is under common control with any General Partner, the Partnership, or any Guarantor);
- (d) the Partnership has not and shall not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the debt secured by the Mortgage and (ii) trade and operational debt incurred in the ordinary course of business with trade creditors in connection with owning, operating and maintaining the Property, in such amounts as are normal and reasonable under the circumstances, provided such debt is not evidenced by a promissory note or other security instrument and is not at any time in an aggregate amount in excess of two percent of the original Loan amount, and further provided that all such trade debts are paid within 30 days after the same are incurred. No indebtedness other than the debt secured by the Mortgage may be secured (senior, subordinated or pari passu) by the Property;
- (e) the Partnership has not and shall not make any loans or advances to any Guarantor, Affiliate or other person or entity;
- (f) the Partnership has remained and shall remain solvent and shall pay its debts from its assets as the same shall become due;
- (g) the Partnership has done and shall do all things necessary to preserve its existence, and the Partnership has not and shall not, nor shall the Partnership permit a Guarantor 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 Partnership or a Guarantor in a manner which would adversely affect the Partnership's existence as a single-purpose entity, without the prior written consent of Lender;
- (h) the Partnership has maintained and shall maintain its financial statements, accounting records, books and records, bank accounts and other entity documents separate from those of its Affiliates, any constituent party of the Partnership or any other person or entity, and the Partnership has filed and will file its own tax returns. The Partnership has maintained and shall maintain its books, records, resolutions and agreements as official records;
- (i) the Partnership has been and shall be, and at all times has held and will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate, any constituent party of the Partnership or any Guarantor), shall correct any known misunderstanding regarding its identity or status as a separate entity, has conducted and shall conduct business in its own name, has held and shall hold its assets in its own name, has maintained and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks, has allocated and shall allocate fairly and reasonably any overhead for shared office space and has not and shall not identify itself as a division or part of any Affiliate or other person or entity, or any Affiliate or other person or entity as a division or part of the Partnership;

- (j) the Partnership has preserved and kept and shall preserve and keep in full force and effect its existence, good standing and qualification to do business in the state in which the Property is located and the Partnership has observed and will observe all limited liability Partnership formalities;
- (k) the Partnership has maintained and shall maintain adequate capital and a sufficient number of employees for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations. The Partnership has paid and will pay the salaries of its own employees;
- (l) the Partnership has not and shall not seek or consent to the dissolution or winding up, in whole or in part, of the Partnership, nor shall the Partnership merge with or be consolidated into any other entity or acquire by purchase or otherwise all or substantially all of the business assets of, or any stock or beneficial ownership of, any entity;
- (m) the Partnership has not and shall not commingle the funds or any other assets of the Partnership with those of any Affiliate, any Guarantor, any constituent party of the Partnership or any other person or entity, and the Partnership has paid and shall pay its own liabilities out of its own funds and assets;
- (n) the Partnership has maintained and shall 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 constituent party of the Partnership, Affiliate, Guarantor or any other person or entity;
- (o) the Partnership has not and shall not assume, guarantee, become obligated for or hold itself out to be responsible for, or hold out its credit as being available to satisfy, or pledge its assets as security for, the debts or obligations of any other person or entity (provided, that the foregoing shall not prevent the Partnership from being and holding itself responsible for expenses incurred or obligations undertaken by the property manager of the Property in respect of its duties regarding the Property);
- (p) the Partnership shall not own any subsidiary, or make any investment in any person or entity;
- (q) the Partnership shall not pledge its assets for the benefit of any other person or entity; and
- (r) the Partnership shall not acquire obligations or securities of any Guarantor or Affiliate.

The foregoing provisions of this Paragraph 4 of this Certificate of Amendment to Certificate of Limited Partnership shall govern over any contrary or inconsistent provision in this Partnership Agreement, the limited partnership certificate of the Partnership or any other document or instrument governing the affairs of the Partnership.

5. **Effect of Bankruptcy, Death or Incompetency of a Limited Partner.**

(a) The bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency of a limited partner in the Partnership shall not cause the termination or dissolution of the Partnership and the business of the Partnership shall continue. Upon any such occurrence, the trustee, receiver, executor, administrator, committee, guardian or conservator of such limited partner shall have all the rights of such limited partner for the purpose of settling or managing its estate or property, subject to satisfying conditions precedent to the admission of such assignee as a substitute limited partner. The transfer by such trustee, receiver, executor, administrator, committee, guardian or conservator of any partnership interest in the Partnership shall be subject to all of the restrictions, hereunder to which such transfer would have been subject if such transfer had been made by such bankrupt, deceased, dissolved, liquidated, terminated or incompetent limited partner.

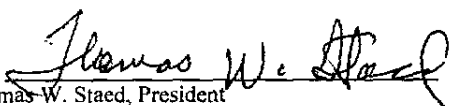
(b) If, notwithstanding the provisions of the foregoing subsection (a), a termination event occurs with respect to the Partnership, the vote of a majority in interest of the remaining partners of the Partnership shall be sufficient to continue the life of the Partnership, and if the vote of a majority in interest of the remaining partners is not obtained to continue the life of the Partnership upon a termination event, the Partnership shall nevertheless not dissolve or liquidate its assets without the consent of the Lender.

This Certificate of Amendment to the Certificate of Limited Partnership shall be effective at the time of its filing with Florida Department of State.

Executed this 19 day of October, 2005.

Aku Tiki, Ltd., a Florida limited partnership
(Florida Document No. A030000001741),
by Aku Tiki, LLC, a Florida limited liability
company (Florida Document No. L03000052549),
its Sole General Partner
by Staed Family Associates, Ltd., a Florida
limited partnership (Florida Document No.
A96000000161), its Managing Member

Staed Family Associates, Ltd., a Florida limited
partnership (Florida Document No. A96000000161),
by B&T Family, Inc., a Florida corporation
(Florida document No. P96000029654), its Sole
General Partner

By: 
Thomas W. Staed, President