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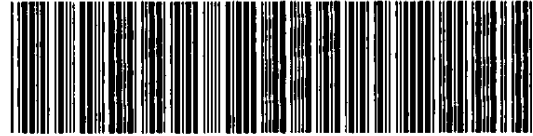
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**L. SELLERS**

JUL 22 2010

**EXAMINER**

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10 JUL 21 AM 10:29  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

## COVER LETTER

**TO: Registration Section  
Division of Corporations**

**SUBJECT:** US CAPITAL HOLDINGS, LLC  
Name of Limited Liability Company

The enclosed Articles of Amendment and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to the following:

PAMELA J. ANSELMO, ESQ.

Name of Person

BECKER & POLIAKOFF, P.A.

Firm/Company

3111 STIRLING ROAD

Address

FT. LAUDERDALE, FL 33312

City/State and Zip Code

PANSELMO@BECKER-POLIAKOFF.COM

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

PAMELA J. ANSELMO, ESQ.

Name of Person

at ( 954 )

364-6062

Area Code & Daytime Telephone Number

Enclosed is a check for the following amount:

☐ \$25.00 Filing Fee

☐ \$30.00 Filing Fee &  
Certificate of Status

☐ \$55.00 Filing Fee &  
Certified Copy  
(additional copy is enclosed)

☒ \$60.00 Filing Fee,  
Certificate of Status &  
Certified Copy  
(additional copy is enclosed)

**MAILING ADDRESS:**

Registration Section  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

**STREET/COURIER ADDRESS:**

Registration Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

**FIRST AMENDMENT  
TO  
AMENDED AND RESTATED ARTICLES OF ORGANIZATION  
OF  
US CAPITAL HOLDINGS, LLC  
(A Florida Limited Liability Company)**

The undersigned Manager of **US CAPITAL HOLDINGS, LLC**, a Florida limited liability company (the "Company"), pursuant to Section 608.411 of the Florida Limited Liability Company Act, hereby submits the following First Amendment to Amended and Restated Articles of Organization of US Capital Holdings, LLC ("Amendment"), for the purpose of amending those certain Amended and Restated Articles of Organization of US Capital Holdings, LLC filed with the Secretary of State of Florida on September 17, 2004 ("Existing Articles") (Amendment and the Existing Articles collectively the "Articles of Organization"), and in connection therewith certifies as follows:

1. The name of this limited liability company is **US CAPITAL HOLDINGS, LLC**.
2. The company was legally organized pursuant to those certain Articles of Organization filed with the Secretary of State for the State of Florida on February 13, 2004, under document number L04000011755.
3. This Amendment to the Existing Articles was authorized and adopted by the Member and Manager of the Company, pursuant to that certain Unanimous Written Consent of the Member and Manager of US Capital Holdings, LLC, dated as of July 7<sup>th</sup>, 2010.
4. Articles III, IV, V, VI, and VIII of the Existing Articles are hereby deleted in their entirety, and the Articles of Organization are hereby supplemented and amended as follows:

**Registered Office and Agent**

The street address of the registered office of the Company is 3111 Stirling Road, Fort Lauderdale, Florida 33312 and the name of the registered agent of this Company at that address is Becker and Poliakoff, P.A.

**Business Purpose**

The Company's purpose and business shall consist solely of the following (collectively the "Business"):

- (i) owning a 100% membership interest in US Capital/Fashion Mall, LLC, a Delaware limited liability ("USC/FM");
- (ii) owning a 100% membership interest in 321 North, LLC, a Florida limited liability company ("321 North");

- (iii) owning a 49% membership interest in 321 North Construction Management, LLC, a Florida limited liability company ("321 NCM");
- (iv) guaranteeing the performance and obligations of USC/FM to Lender (as hereinafter defined) under the Loan Documents (as hereinafter defined); and
- (v) To engage in such other lawful activities permitted to the Company by the Florida Limited Liability Company Act, in its present form or as amended from time to time, as are incidental, necessary and appropriate to accomplish the foregoing.

#### **Separateness/Operations Matters**

USC/FM obtained a loan in the original principle amount of \$15,000,000 (the "Loan") from Canpartners Realty Holding Company IV LLC, a Delaware limited liability company, together with its successors and assigns (the "Lender"), pursuant to that certain loan agreement ("Loan Agreement") and related loan documents, as amended, restated, replaced, supplemented or otherwise modified from time to time ("Loan Documents"), by and between USC/FM and the Lender. Pursuant to Lender's requirements, the Company guaranteed the performance and obligations of USC/FM under the Loan Agreement and Loan Documents.

So long as the obligations of USC/FM under the Loan Agreement and Loan Documents, as guaranteed by the Company, shall remain outstanding (it being understood and agreed that, for purposes of the Articles of Organization, the Loan, shall not be deemed "outstanding" if the Loan to Lender has been satisfied or refinanced), the Company has taken and will take the following steps to ensure at all times that the Company operates and maintains its legal status as an independent entity separate and distinct from any other Person ("Separateness Criteria") and this requirement may not be amended without prior written consent of Lender and as otherwise required by the terms and conditions of the Agreement:

- (a) The Company shall not:
  - (i) engage in any business or activity other than the Business;
  - (ii) acquire or own any asset other than the membership interests in USC/FM, 321 North, and 321 NCM;
  - (iii) merge into or consolidate with any Person or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;
  - (iv) fail to preserve its existence as an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or formation;
  - (v) amend, modify, terminate or fail to comply with the provisions of the Operating Agreement or any other organizational document, as the case may be;

- (vi) own any subsidiary or make any investment in or acquire the obligations or securities of any other Person;
- (vii) commingle its assets with the assets of any Member, any Affiliate of any Member or any other Person;
- (viii) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Loan, except unsecured trade and operational debt, not more than thirty (30) days old, incurred with trade creditors in the ordinary course of its Business in such amounts as are normal and reasonable under the circumstances and permitted under the Loan Documents provided that such debt is not evidenced by a note and is paid when due and provided in any event the outstanding principal balance of such debt shall not exceed at any time one percent (1%) of the outstanding principal balance of the Loan;
- (ix) become insolvent or fail to pay its debts and liabilities from its own assets as the same shall become due;
- (x) fail to maintain its records, books of account and bank accounts separate and apart from those of any Member, any Affiliate of the Company or any Member, or any other Person;
- (xi) enter into any contract or agreement with any Member or any Affiliate of any Member, except as expressly permitted under the Loan Documents and 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 Member or any Affiliate of any Member;
- (xii) seek the liquidation, dissolution or winding up, in whole or in part, or the sale of substantially all of the assets of the Company except in compliance with the Loan Documents;
- (xiii) fail to correct any known misunderstandings regarding the separate identity of the Company;
- (xiv) hold itself out to be responsible (or pledge its assets as security) for the debts of another Person;
- (xv) make any loans or advances to any third party, including any Member or any Affiliate of any Member;
- (xvi) fail to file its own separate non-consolidated tax returns or to use separate stationery, invoices and checks;
- (xvii) agree to enter into or consummate any transaction which would have the effect of substantially consolidating the Company into any Member or any Affiliate of any Member at law or in equity;

- (xviii) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its Business solely in its own name in order not (A) to mislead others as to the entity with which such other party is transacting business, or (B) to suggest that the Company is responsible for the debts of any third party (including any Member or any Affiliate of any Member);
  - (xix) fail to allocate fairly and reasonably among the Company and any third party any overhead for shared office space;
  - (xx) fail to pay the salaries of its own employees and maintain a sufficient number of employees for its contemplated business operations;
  - (xxi) fail to 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;
  - (xxii) filed or consented to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or made an assignment for the benefit of creditors; or
  - (xxiii) share any common logo with or hold itself out as or be considered as a department or division of (A) any Member, or any Affiliate of the Company, (B) any Affiliate of any Member, or (C) any other Person.
- (b) Without the prior written consent of Lender and the unanimous written consent of all Members, the Company shall not file or consent to the filing of a bankruptcy or insolvency petition, or the conversion of a Chapter 7 case into a Chapter 11 case, or vice versa, or consent to any general assignment for the benefit of creditors, the institution of any other insolvency proceeding or the seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official, for the Company, for any portion of its property, or for any other Person in which it has a direct or indirect legal or beneficial interest.
- (c) Neither the Company nor any Member shall waive, modify or otherwise amend any provision of the Operating Agreement without the prior written consent of Lender.

### **Management**

The Company shall be managed by one Manager, as Approved by the Members. So long as the obligations of USC/FM under the Loan Agreement and Loan Documents, as guaranteed by the Company, shall remain outstanding, there shall be no change in the Manager from and after the date hereof without the prior written consent of Lender.

Notwithstanding any provision in the Articles of Organization or the Operating Agreement to the contrary, neither the Manager nor the Member will have the authority to take any of the following actions without the prior written consent and approval of (i) the Manager and (ii) the Member and (iii) so long as the obligations of USC/FM under the Loan Agreement and Loan

Documents, as guaranteed by the Company, shall remain outstanding, the prior written consent of the Lender:

(a) The sale, assignment, transfer, encumbrance or other disposition of the assets of the Company;

(b) The conversion, merger or consolidation of the Company with or into another Person;

(c) The making of distributions to Members;

(d) Change its principal place of business;

(e) Execute any modification to the Agreement;

(f) Admitting new members to the Company or issuing Membership Interests of the Company to any Person; and

(g) The taking of any other action or making of any other decision which, under the terms of the Agreement are defined as a Material Action.

#### **Chapter 678 "opt in"**

Pursuant to and in accordance with the provisions of Florida Statutes, Title XXXIX, Chapter 678, all Membership Interests of the Company shall be considered and treated as "securities" (within the meaning of Florida Statutes Chapter 678, Uniform Commercial Code – Investment Securities).

#### **Definitions**

Any capitalized term not defined in this Amendment shall have the meaning set forth in the Operating Agreement.

**Affiliate** means, when used with reference to any Person (as hereinafter defined), (i) any Person that, directly or indirectly, through one or more intermediaries controls, is controlled by, or is under common control with, or owns any interest in the specified Person (the term "control" for this purpose, shall mean the ability, whether by the ownership of shares or other equity interest, by contract or otherwise, to elect a majority of the directors of a corporation, independently to select the managing partner of a partnership or a manager of a limited liability company, or otherwise to have the power independently to remove and then select a majority of those Persons exercising governing authority over an entity, and control shall be conclusively presumed in the case of the direct or indirect ownership of 50% or more of the equity interests); and (ii) a parent, sibling or issue of such Person.

**Agreement or Operating Agreement** means the Third Amended and Restated Regulations and Operating Agreement, for the regulation and the management of the affairs of the Company.

**Approved by the Member(s) or Approval of the Member(s)** shall mean the consent or approval of all of the Members.

**Material Action** means to consolidate or merge the Company with or into any Person, or sell all or substantially all of the assets of the Company, or to institute proceedings to have the Company be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company or file a petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or a substantial part of its property, or make any assignment for the benefit of creditors of the Company, or admit in writing the Company's inability to pay its debts generally as they become due, or take action in furtherance of any such action, or to the fullest extent permitted by law, dissolve or liquidate the Company.

**Membership Interests** means one or more membership interests owned by a Member out of the one hundred (100) authorized Membership Interests, as designated on Exhibit A attached hereto (as it may be amended from time to time) and set forth opposite the Members' names. Each Membership Interest represents a percentage ownership interest in the Company. Such percentage is sometimes herein referred to as a Member's "Percentage Interest" and it is computed by dividing the number of Membership Interests owned by a Member by the total number of issued and outstanding Membership Interests, excluding any Membership Interests redeemed by, and held by, the Company, as adjusted from time to time. A Member's Percentage Interest represents a Member's entire ownership interest in the Company, including the Member's rights to receive allocations of profits and losses, distributions and a return of capital. **A Membership Interest shall be an "uncertificated" security within the meaning of Chapter 678.1021 of the Florida Uniform Commercial Code.**

**Person** means an individual, corporation, trust, association, unincorporated association, estate, partnership, joint venture, limited liability company or other legal entity, including a governmental entity.

[SIGNATURE ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned authorized person has executed this Amendment to Amended and Restated Articles of Organization on behalf of US CAPITAL HOLDINGS, LLC, this 14<sup>th</sup> day of July, 2010.

By: 

Name: Wei Chen

Its: Manager