

# P000000043138

**Florida Department of State**

Division of Corporations

Public Access System

Katherine Harris, Secretary of State

**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.**

(((H01000070387 5)))

**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 : EMPIRE CORPORATE KIT COMPANY  
Account Number : 072450003255  
Phone : (305) 634-3694  
Fax Number : (305) 633-9696

**BASIC AMENDMENT****AMBERWOOD REALTY CORP.**

|                       |         |
|-----------------------|---------|
| Certificate of Status | 0       |
| Certified Copy        | 0       |
| Page Count            | 06      |
| Estimated Charge      | \$35.00 |

RECEIVED  
01 JUN -5 PM 2:13  
DIVISION OF CORPORATIONS

FILED  
01 JUN -5 PM 3:50  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

*Amend*



FLORIDA DEPARTMENT OF STATE

Katherine Harris  
Secretary of State

RECEIVED  
01 JUN -5 PM 2:13  
DIVISION OF CORPORATIONS

May 31, 2001

AMBERWOOD REALTY CORP.  
C/O LEE C. SCHMACHTENBERG, P.A.  
1533 SUNSET DRIVE, SUITE 201  
CORAL GABLES, FL 33143

SUBJECT: AMBERWOOD REALTY CORP.  
REF: P00000043138

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.

The date of adoption of each amendment must be included in the document.

The amendment must be adopted in one of the following manners:

(1) If an amendment was approved by the shareholders, one of the following statements must be contained in the document.

(a) A statement that the number of votes cast for the amendment by the shareholders was sufficient for approval, -or-

(b) If more than one voting group was entitled to vote on the amendment, a statement designating each voting group entitled to vote separately on the amendment and a statement that the number of votes cast for the amendment by the shareholders in each voting group was sufficient for approval by that voting group.

(2) If an amendment was adopted by the incorporators or board of directors without shareholder action.

(a) A statement that the amendment was adopted by either the incorporators or board of directors and that shareholder action was not required.

The document must be signed by the chairman, any vice chairman of the board of directors, its president, or another of its officers.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 487-6869.

Teresa Brown

FAX Aud. #: H01000070387

Division of Corporations - P.O. BOX 6327 - Tallahassee, Florida 32314

401000070387  
**ARTICLES OF FIRST AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF  
AMBERWOOD REALTY CORP.**

FILED  
01 JUN -5 PM 3:50  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

*Pursuant to the provisions of section 607.1006, Florida Statutes, this Florida profit corporation adopts the following articles of amendment to its articles of incorporation:*

**FIRST:** Amendments adopted:

**ARTICLE III - The purpose of the subject corporation shall be changed to:**

1. The purpose of the corporation (the "Company") is limited solely to (i) owning, holding, selling, leasing, transferring, exchanging, operating and managing the real property located at Tampa, Florida, and more particularly described on Exhibit A (the "Property"), (ii) obtain a loan or loans (the "First Mortgage Loan") from a financial institution or institutions selected by Company (the "Lender") which First Mortgage Loan shall be secured a first priority mortgage/deed of trust upon the Property (the "Mortgage"), and (iii) transacting any and all lawful business that is incident, necessary and appropriate to accomplish the foregoing.

2. Notwithstanding any other provision of the Agreement to the contrary, so long as the First Mortgage Loan is outstanding, the Company may not, without the prior written consent of the Lender, do any of the following:

- a. engage in any business or activity other than those set forth in Paragraph 1;  
or
- b. incur any indebtedness or assume or guaranty any indebtedness other than the First Mortgage Loan and unsecured trade debt incurred in the ordinary course of business which is payable within thirty (30) days of when incurred, provided that the total outstanding amount of such trade debt does not exceed any maximum amount provided in the Mortgage at any one time.

3. Notwithstanding any other provision in these Articles to the contrary, so long as the First Mortgage is outstanding, the Company 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 sell, convey, encumber, transfer or lease its properties and assets substantially as an entirety to any person or entity;

401000070387

401000070387

- c. amend or cause to be amended these Articles with respect to changing the sole purpose of the Company or the separateness covenants contained in Paragraph 4 hereof; or
- d. take any action that might cause the Company to become insolvent.

4. The Company shall at times observe the applicable legal requirements for the recognition of the Company as a legal entity separate from any Affiliates (as defined below), including without limitation, as follows:

- a. At least one (1) of the directors of the Company shall be an Independent Director. Independent Director means a natural person who has not been and during the continuation of his or her services as Independent Director (i) except in the capacity as an Independent Director of the Company, is not an employee, officer, director, counsel, agent or shareholder, partner or member of the Company or any Affiliate, or a former employee, officer, director, counsel, agent, or shareholder, partner or member of the Company or any Affiliate, (ii) is not a customer or supplier of the Company or any Affiliate, or other person or entity who derives or is entitled to derive any of its profits or revenues or any payments (other than any fee paid to such director as compensation for such director to serve as an Independent Director) from the Borrower or any Affiliate, (iii) is not (and is not affiliated with an entity that is) an advisor or consultant to the Company or any Affiliate, (iv) is not a spouse, parent, child, grandchild or sibling of, or otherwise related to, any of (i), (ii) or (iii) above, and (v) is not affiliated with a person or entity of which the Company or any Affiliate is a customer or supplier. In the event of the death, incapacity, resignation or removal of an Independent Director, the Board of Directors of the Company shall promptly appoint a replacement Independent Director and no action requiring the consent of the Independent Director shall be taken until a replacement Independent Director has been appointed. In addition, no Independent Director may be removed unless his or her successor satisfying the definition hereunder has been appointed.
- b. The Company shall maintain its principal executive office and telephone and facsimile numbers separate from that of any Affiliate and shall conspicuously identify such office and numbers as its own or shall allocate by written agreement fairly and reasonably any rent, overhead and expenses for share of office space. Additionally, the Company shall use its own separate stationery, invoices and checks which reflect its separate address, telephone number and facsimile number, as appropriate.
- c. The Company shall maintain correct and complete financial statements, accounts, books and records and other entity documents separate from those of any Affiliate or any other entity or person. The Company shall prepare unaudited quarterly and annual financial statements, and the Company's

401000070387

401000070387

financial statements shall substantially comply with generally accepted accounting principles.

- d. The Company shall maintain its own separate bank accounts, payroll and correct, complete and separate books of account.
- e. The Company shall file or cause to be filed its own separate tax returns.
- f. The Company shall hold itself out to the public (including any Affiliate's creditors) under the Company's own name and as a separate and distinct corporate entity and not as a department, division or otherwise of any Affiliate.
- g. The Company shall observe all customary formalities regarding the corporate existence of the Company, including holding meetings of or obtaining the consent of its Board of Directors, as appropriate, and its stockholders and maintaining current and accurate minute books separate from those of any Affiliate, shall be observed.
- h. The Company shall hold title to its assets in its own name and act solely in its own name and through its own duly authorized officers and agents. No Affiliate shall be appointed or act as agent of the Company, other than, as applicable, a property manager with respect to the Property.
- i. Investments shall be made in the name of the Company directly by the Company or on its behalf by brokers engaged and paid by the Company or its agents.
- j. Except as required by Lender, the Company shall not guarantee or assume or hold itself out or permit itself to be held out as having guaranteed or assumed any liabilities or obligations of any Affiliate, nor shall it make any loan, except as permitted in the loan agreement with the Lender.
- k. The Company is and will be solvent and shall pay its own liabilities, indebtedness and obligations of any kind, including all administrative expenses, from its own separate assets.
- l. Assets of the Company shall be separately identified, maintained and segregated. The Company's assets shall at all times be held by or on behalf of the Company and, if held on behalf of the Company by another entity, shall at all times be kept identifiable (in accordance with customary usages) as assets owned by the corporation. This restriction requires, among other things, that (i) Company funds shall be deposited or invested in the Company's name, (ii) Company funds shall not be commingled with the funds of any Affiliate, entity or person, (iii) the Company shall maintain all

401000070387

H01000070387

accounts in its own name and with its own tax identification number, separate from those of any Affiliate, entity or person, and (iv) Company funds shall be used for the business of the Company.

- m. The Company shall 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 Affiliate, entity or person.
- n. The Company shall pay or cause to be paid its own liabilities and expenses, including but not limited to salaries of its employees, only out of its own funds and assets.
- o. The Company shall at all times be adequately capitalized to engage in the transactions contemplated at its formation.
- p. The Company shall not do any act which would make it impossible to carry on the ordinary business of the Company.
- q. All data and records (including computer records) used by the Company or any Affiliate in the collection and administration of any loan shall reflect the Company's ownership interest therein.
- r. None of the Company's funds shall be invested in securities issued by any Affiliate.
- s. The Company shall maintain an arm's length relationship with each of its Affiliates and enter into contracts or transact business with its Affiliates only on commercially reasonable terms that are not less favorable to the Company than is obtainable in the market from an entity or individual that is not an Affiliate.
- t. The Company shall correct any misunderstanding that is known by the Company regarding name or separate identity.

For purposes of this Amendment, Affiliate means any person or entity, including the Company, which directly or indirectly through one or more intermediaries' controls, is controlled by or is under common control with a shareholder. For purposes hereof, the terms "control," "controlled" or "controlling" shall include, without limitation, (i) the ownership, control or power to vote ten percent (10%) or more of (x) the outstanding shares of any class of voting securities or (y) the Company or beneficial interests of any such person or entity, as the case may be, directly or indirectly, or acting through one or more persons or entities, (ii) the control in any manner over the shareholder(s) or the election of more than one director or trustee (or persons exercising similar functions) of such person or entity, or (iii) the power to exercise, directly or indirectly, control over the management or policies of such person or entity.

H01000070387

H01000070387

5. The Company shall not, without the affirmative vote of 100 percent of the Board of Directors, including the affirmative vote of the Independent Director, with respect to it: (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) consent to the appointment of a receiver, liquidate, assignee, trustee, sequestrator (or other similar official) of the Company or a substantial part of its respective property; (e) make any assignment for the benefit of creditors; (f) admit in writing its inability to pay debts generally as they become due; or (g) take any corporate action in furtherance of any such action.

**SECOND:** Adoption Date

The date of the amendments' adoption shall be effective on May 1, 2001.

**THIRD:** Adoption of Amendments

This amendment was adopted by the sole shareholder, who cast the necessary vote to pass the Amendment.

Signed this 30th day of May, 2001.

Signature

STEVEN GREEN  
SOI & SHAREHOLDER/PRESIDENT

H01000070387