

PO0000073114



THE UNITED STATES  
CORPORATION  
COMPANY

ACCOUNT NO. : 072100000032

REFERENCE : 782863 134074A

AUTHORIZATION :

*Patricia Pigute*

COST LIMIT : \$ 78.75

ORDER DATE : August 1, 2000

ORDER TIME : 11:45 AM

ORDER NO. : 782863-025

CUSTOMER NO: 134074A

CUSTOMER: Ms. Diane Israel  
Baldovin, Saraga & Lipshy,  
P.a.  
201 Northeast First Avenue

200003342362--3

Delray Beach, FL 33444

DOMESTIC FILING

NAME: PREFERRED EXCHANGE TOWER, INC.

\*\*\*\*\*FILE FIRST\*\*\*\*\*

EFFECTIVE DATE:

XX ARTICLES OF INCORPORATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY

CONTACT PERSON: Darlene Ward - EXT. 1135

EXAMINER'S INITIALS:

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
00 AUG - 1 PM 3:07

*8/1/00*

RECEIVED  
00 AUG - 1 PM 1:03  
DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS  
TALLAHASSEE, FL 32310

**Articles of Incorporation**

**of**

**Preferred Exchange Tower, Inc.**

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS

00 AUG -1 PM 3: 07

The undersigned files these Articles of Incorporation ("**Articles**") for the purpose of forming a corporation under and pursuant to the laws of the State of Florida providing for the formation, liability, privileges, rights and immunities of a corporation for profit, and does hereby organize the corporation with the name set forth below and adopts the following Articles.

**ARTICLE I**

The name of the corporation is **Preferred Exchange Tower, Inc.** (the "**Corporation**").

**ARTICLE II**

The period of duration of the Corporation is perpetual.

**ARTICLE III**

The Corporation's business and purpose shall consist solely of the following:

- (i) To serve as the Managing Member of **Preferred Exchange Tower, LLC** and the related management of the real estate project known as **3111 North University Drive, 33065**, located in the city of Coral Springs, Broward County, Florida (the "**Property**"), pursuant to and in accordance with these Articles; and
- (ii) to engage in such other lawful activities permitted to corporations by the General Corporation Laws of the State of Florida ( the "**Act**") as are incidental, necessary or appropriate to the foregoing.

**ARTICLE IV**

Notwithstanding any other provision of these Articles and any provision of law that otherwise empowers the Corporation and so long as any obligations secured by (i) a first priority mortgage, deed of trust or deed to secure debt incurred in connection with any financing of the Property or (ii) the stock or membership interest in either **Preferred Coral Springs I, LLC** and/or **Preferred Exchange Tower, LLC** is pledged or collaterally assigned to secure a debt (collectively the debt instruments described in (i) and (ii) above are sometimes referred to herein as the "**Security Instruments**") remain outstanding and not discharged in full, the Corporation shall not, without the unanimous consent of the Board of Directors, do any of the following:

- (i) engage in any business or activity other than those set forth in **Article III**;
- (ii) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than obligations secured by the Security Instruments, except unsecured trade and operational debt incurred with trade creditors as a member of **Preferred Exchange Tower, LLC**, in such amounts as are normal and reasonable under the circumstances;
- (iii) seek the dissolution or winding up, in whole or in part, of the Corporation;
- (iv) cause the Corporation to merge into or consolidate with any person or entity 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;
- (v) file a voluntary petition or otherwise initiate proceedings to have the Corporation adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Corporation, or file a petition seeking or consenting to reorganization or relief of the Corporation as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Corporation; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Corporation or of all or any substantial part of the properties and assets of the Corporation, or make any general assignment for the benefit of creditors of the Corporation, or admit in writing the inability of the Corporation to pay its debts generally as they become due or declare or effect a moratorium on the Corporation debt or take any action in furtherance of any such action; or
- (vi) amend Articles **III**, **IV**, **V** and **VI** of these Articles.

## **ARTICLE V**

The Corporation has not and shall not:

- (a) acquire or own any material asset other than (i) a one percent (1%) interest in **Preferred Exchange Tower, LLC**; and (ii) such incidental personal property as may be necessary for the operation and maintenance of the Property;
- (b) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation;
- (c) commingle its assets with the assets of any shareholder, principal or affiliate of the Corporation, or of any other person or entity or transfer any assets to any such person or entity other than distributions on account of equity interests in the Corporation permitted by the Security Instruments and properly accounted for;

(d) allow any person or entity to pay its debts and liabilities (except for Guarantors or Indemnitors (as defined in the Security Instruments) or fail to pay its debts and liabilities solely from its own assets;

(e) fail to maintain its records, books of account and bank accounts separate and apart from those of the shareholders, principals and affiliates of the Corporation, the affiliates of the shareholders of the Corporation and any other person or entity or fail to prepare and maintain its own financial statements in accordance with generally accepted accounting principles and susceptible to audit, or if such financial statements are consolidated fail to cause such financial statements to contain footnotes disclosing that the ownership interest in **Preferred Exchange Tower, LLC** is actually owned by the Corporation;

(f) fail to correct any known misunderstandings regarding the separate identity of the Corporation;

(g) fail to file its own tax returns or to use separate contracts, purchase orders, stationary, invoices and checks;

(h) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that the Corporation is responsible for the debts of any third party (including any shareholder, principal or affiliate of the Corporation or any shareholder, partner, member, principal or affiliate thereof);

(i) 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;

(k) conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of the Corporation or the creditors of any other person or entity.

## ARTICLE VI

Notwithstanding any provision hereof to the contrary, any indemnification claim against the Corporation arising under these Articles, the By-Laws or the laws of the state of organization of the Corporation shall be fully subordinate to any obligations of the Corporation arising under the Security Instruments or any other Loan Document (as defined therein), and shall only constitute a claim against the Corporation to the extent of, and shall be paid by the Corporation in monthly installments only from, the excess of net operating income of the Corporation for any month over all amounts then due under the Security Instruments and the other Loan Documents.

## **ARTICLE VII**

The aggregate number of all classes of stock which the Corporation has authority to issue is 1,000 shares, no par value.

## **ARTICLE VIII**

Shareholders shall have preemptive rights to purchase a proportionate number of shares of any new stock issue.

## **ARTICLE IX**

The principal place of business of the Corporation shall be Broward County, Florida, and its mailing address shall be:

3111 North University Drive  
Suite 431  
Coral Springs, Florida 33065

## **ARTICLE X**

The name of the registered agent and the street address of the initial registered office of the Corporation is:

BALDOVIN, SARAGA & LIPSHY, P.A.  
201 N.E. 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444  
Attention: Robert S. Saraga, Esq.

## **ARTICLE XI**

The names and street addresses of the initial officers and directors, who shall hold office until the first meeting of the shareholders or until a successor shall have been elected and qualified, is as follows:

### NAME

Thomas R. Speno, Managing Director

### ADDRESS

3111 North University Drive  
Suite 431  
Coral Springs, Florida 33065

Thomas P. Weber, Managing Director

3111 North University Drive  
Suite 431  
Coral Springs, Florida 33065

Jordan C. Paul, Managing Director

3111 North University Drive  
Suite 431  
Coral Springs, Florida 33065

Valerie McClory, Secretary

3111 North University Drive  
Suite 431  
Coral Springs, Florida 33065

The number of directors may be increased or decreased from time to time by amendment to the By-Laws of the Corporation, provided that the Corporation shall at all times have at least one director.

#### ARTICLE XII

Subject to the provisions of Article VI herein, the Corporation shall indemnify and advance expenses to the fullest extent authorized or permitted by the Act to any person made, or threatened to be made, a party to any action, suit or proceeding by reason of the fact that he or she is or was a director or officer of the Corporation or is or was serving at the request of the Corporation as a director or officer of another corporation. Unless otherwise expressly prohibited by the Act, and except as otherwise provided in the foregoing sentence, the Board of Directors of the Corporation shall have the sole and exclusive discretion, on such terms and conditions as it shall determine, to indemnify, or advance expenses to, any person made, or threatened to be made, a party to any action, suit, or proceeding by reason of the fact that he or she is or was an employee or agent of the Corporation, or is or was serving at the request of the Corporation as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise. Except for any person who is or was a director or officer of the Corporation, or any person who is or was serving at the request of the Corporation as a director or officer of another corporation, no employee or agent of the Corporation may apply for indemnification or advancement of expenses to any court of competent jurisdiction.

#### ARTICLE XIII

The names and address of the Incorporator of the Corporation is as follows:

NAME

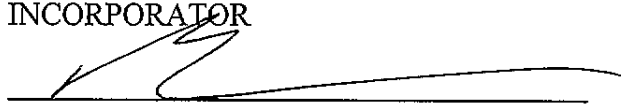
ADDRESS

Thomas P. Weber

3111 North University Drive  
Suite 431  
Coral Springs, Florida 33065

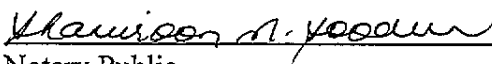
IN WITNESS WHEREOF, I have hereunto set my hand this 31<sup>st</sup> day of July, 2000.


INCORPORATOR

  
THOMAS P. WEBER, Managing Director

STATE OF FLORIDA                    )  
  ) SS  
COUNTY OF PALM BEACH        )

The foregoing instrument was acknowledged before me this 31<sup>st</sup> day of July, 2000 by THOMAS P. WEBER, who is personally known to me or who has produced \_\_\_\_\_ as identification.

  
Notary Public

 Shamiroun M Soodeen  
My Commission CC736747  
Expires June 3, 2002

CERTIFICATE OF DESIGNATION  
REGISTERED AGENT/REGISTERED OFFICE

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS

00 AUG -1 PM 3: 07

Pursuant to the provisions of Section 607.0501, Florida Statutes, the undersigned corporation, organized under the laws of the State of Florida, submits the following statement in designating the registered office/registered agent, in the State of Florida.

1. The name of the Corporation is Preferred Exchange Tower, Inc.
2. The name and address of the registered agent and office is:

BALDOVIN, SARAGA & LIPSHY, P.A.  
201 N.E. 1<sup>st</sup> Avenue  
Delray Beach, Florida 33444  
Attention: Robert S. Saraga, Esq.

HAVING BEEN NAMED AS REGISTERED AGENT AND TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION AT THE PLACE DESIGNATED IN THIS CERTIFICATE, WE HEREBY ACCEPT THE APPOINTMENT AS REGISTERED AGENT AND AGREE TO ACT IN THIS CAPACITY. WE FURTHER AGREE TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATING TO THE PROPER AND COMPLETE PERFORMANCE OF OUR DUTIES, AND WE ARE FAMILIAR WITH AND ACCEPT THE OBLIGATIONS OF OUR POSITION AS REGISTERED AGENT.

BALDOVIN, SARAGA & LIPSHY, P.A.

By: 

ROBERT S. SARAGA, Vice President

Dated: July 31, 2000