

To: FL Dept of State
Subject: 001500.69038

From: Tracy S. S. S.

Thursday, May 24, 2007 10:00 AM Page 1 of 12

PO 30000 28063

Florida Department of State
Division of Corporations
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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

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WATER TOWER RETAIL, INC.

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Amend & Restated
06-01-07

To: FL Dept of State
Subject: 001500.69038

From: Tracy Spear

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5/31/2007

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Florida Dept of State



May 31, 2007

FLORIDA DEPARTMENT OF STATE
Division of Corporations

WATER TOWER RETAIL, INC.
7505 W. SAND LAKE ROAD
ORLANDO, FL 32819

SUBJECT: WATER TOWER RETAIL, INC.
REF: P03000028063

PLEASE GIVE ORIGINAL SUBMISSION
DATE AS FILE DATE.

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.

A certificate must accompany the Restated Articles of Incorporation setting forth either of the following statements: (1) The restatement was adopted by the board of directors and does not contain any amendment requiring shareholder approval. OR (2) If the restatement contains an amendment requiring shareholder approval, the date of adoption of the amendment and a statement setting forth the following: (a) the number of votes cast for the amendment by the shareholders was sufficient for approval (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.

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Darlene Connell
Document Specialist

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P.O. BOX 6327 - Tallahassee, Florida 32314

To: FI Dept of State
Subject: 001500.69038

From: Tracy Spear

Wednesday, May 30, 2007 3:39 PM Page: 2 of 12

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5/30/2007

PAGE 001/001

Florida Dept of State



May 30, 2007

FLORIDA DEPARTMENT OF STATE
Division of Corporations

WATER TOWER RETAIL, INC.
7505 W. SAND LAKE ROAD
ORLANDO, FL 32819

SUBJECT: WATER TOWER RETAIL, INC.
REF: P03000028063

PLEASE GIVE ORIGINAL SUBMISSION
DATE AS FILE DATE

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THE DOCUMENT STATES THAT THE INITIAL BOARD OF DIRECTORS SHALL CONSIST OF THREE (3) DIRECTORS. SHOULD THERE BE TWO MORE DIRECTORS LISTED UNDER ARTICLE IX ??????????????

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

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Darlene Connell
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DIVISION OF CORPORATIONS

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**SECOND AMENDED & RESTATED
ARTICLES OF INCORPORATION
OF
WATER TOWER RETAIL, INC.**

FILED
07 MAY 29 PM 3:35
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The undersigned incorporator delivers these Second Amended & Restated Articles of Incorporation in order to form a corporation under the Florida Business Corporation Act (the "Act").

ARTICLE I
NAME

The name of this Corporation shall be **Water Tower Retail, Inc.**

ARTICLE II
PRINCIPAL OFFICE

The principal office of the Corporation is located at 7505 W. Sand Lake Road, Orlando, Florida 32819 and its mailing address is 7505 W. Sand Lake Road, Orlando, Florida 32819.

ARTICLE III
PURPOSE

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

(i) To acquire a Membership Interest in and act as the Managing Member of **Water Tower Retail, LLC** (the "**LLC**"), which is engaged solely in the ownership, operation and management of the real estate project known as **Celebration** located in **Celebration, FL** (the "**Property**"), pursuant to and in accordance with these Articles of Incorporation and the LLC's Articles of Organization; and

(ii) to engage in such other lawful activities permitted to Corporations by the **Laws** of the State of **Florida** as are incidental, necessary or appropriate to the foregoing.

ARTICLE IV
INDEPENDENT DIRECTOR

(a) At all times at which the directors of the Corporation shall take, or shall be required to take, any action in such capacity and until such time as all obligations secured by the first lien mortgage incurred in connection with the **refinancing** of the **Property** (the "**Mortgage**") have been paid in full, there shall be at least one Independent Director. An "**Independent Director**" shall be an individual who, except in his or her capacity as an Independent Director of the Corporation is not, and has not been during the five (5) years

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immediately before such Individual's appointment as an Independent Director, (i) a member, stockholder, partner, director, officer or employee of the Corporation, the LLC or their Affiliates; (ii) affiliated with a customer or supplier of the Corporation, the LLC or their Affiliates; (iii) a spouse, parent, sibling, child or other family relative of any person described by (i) or (ii) above.

As used herein, the term "Affiliate" shall mean any person or entity other than the Corporation (i) which owns beneficially, directly or indirectly, any outstanding shares of the Corporation's stock or any membership interest in the LLC, or (ii) which controls or is under common control with the Corporation or the LLC. The term "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 ownership of voting securities, by contract or otherwise.

(b) With the consent of the initial stockholder of the Corporation, which consent the initial stockholder believes to be in the best interest of the initial stockholder and the Corporation, no Independent Director shall, with regard to any action to be taken under or in connection with this Article, owe a fiduciary duty or other obligation to the initial stockholder nor to any successor stockholders (except as may specifically be required by the statutory law of any applicable jurisdiction), and every stockholder, including each successor stockholder, shall consent to the foregoing by virtue of such stockholder's purchase of shares of capital stock of the Corporation, no further act or deed of any stockholder being required to evidence such consent. Instead, such director's fiduciary duty and other obligations with regard to such action under or in connection with this Article shall be owed to the Corporation (including its creditors). In addition, no Independent Director may be removed unless his or her successor has been elected.

(c) Notwithstanding any other provision of these Articles and any provision of law that otherwise so empowers the Corporation, the Corporation shall not, without the unanimous consent of the Board of Directors, including the Independent Director, do any of the following:

- (i) engage in any business or activity other than those set forth in Article III or cause or allow the LLC to engage in any business or activity other than as set forth in its Articles of Organization;
- (ii) incur any indebtedness or assume or guaranty any indebtedness of any other entity, other than the Mortgage, indebtedness permitted therein and normal trade accounts payable in the ordinary course of business;
- (iii) cause the LLC to incur any indebtedness or to assume or guaranty any indebtedness of any other entity, other than the Mortgage, indebtedness permitted therein and normal trade accounts payable in the ordinary course of business;
- (iv) dissolve or liquidate, in whole or in part;

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- (v) cause or consent to the dissolution or liquidation, in whole or in part, of the LLC;
- (vi) consolidate or merge with or into any other entity or convey or transfer or lease its property and assets substantially as an entirety to any entity;
- (vii) cause the LLC to consolidate or merge with or into any other entity or to convey or transfer or lease its Property and assets substantially as an entirety to any entity;
- (viii) with respect to the Corporation or the LLC, institute proceedings to be adjudicated bankrupt or insolvent, or consent to the institution or bankruptcy or insolvency proceedings against it, or file a petition seeking or consenting to reorganization or relief 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 Corporation or the LLC or a substantial part of property of the Corporation or the LLC, or make any assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or take corporate action in furtherance of any such action;
- (ix) amend Articles **III, IV or V** of these Articles of Incorporation or approve an amendment to Articles **III, IV, V, VI or VII** of the Articles of Organization governing the LLC; or
- (x) withdraw as the Managing Member of the LLC.

In addition to the foregoing, so long as any obligation secured by the Mortgage remains outstanding and not discharged in full, the Corporation shall not, without the prior written consent of the holder of the Mortgage, take any action set forth in items (i) through (vii) and items (ix) and (x).

ARTICLE V **SEPARATENESS/OPERATIONS MATTERS**

The Corporation shall:

- (a) maintain books and records and bank accounts separate from those of any other person;
- (b) maintain its assets in such a manner that it is not costly or difficult to segregate, identify or ascertain such assets;
- (c) hold regular Board of Director and stockholder meetings, as appropriate, to conduct the business of the Corporation, and observe all other corporate formalities;

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- (d) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity;
- (e) prepare separate tax returns and financial statements, or if part of a consolidated group, then it will be shown as a separate member of such group;
- (f) allocate and charge fairly and reasonably any common employee or overhead shared with affiliates;
- (g) transact all business with affiliates on an arm's-length basis and pursuant to enforceable agreements;
- (h) conduct business in its own name, and use separate stationery, invoices and checks;
- (i) not commingle its assets or funds with those of any other person;
- (j) not assume, guarantee or pay the debts or obligations of any other person;
- (k) correct any known misunderstanding as to its separate identity;
- (l) not permit any affiliate to guarantee or pay its obligations (other than limited guarantees set forth in the Mortgage or related documents); and
- (m) not make loans or advances to any other person.

ARTICLE VI
DURATION OF THE CORPORATION

Existence of the Corporation shall commence on the date all fees are paid and these Articles of Incorporation are filed by the Secretary of State and the Corporation shall exist perpetually unless dissolved according to law.

ARTICLE VII
AUTHORIZED STOCK

The total number of shares of capital stock which the Corporation has the authority to issue is 10,000 shares of Common Stock, with a \$1.00 per value per share.

ARTICLE VIII
REGISTERED OFFICE AND REGISTERED AGENT

The street address of the Initial Registered Office of the Corporation in the State of Florida shall be 7505 W. Sand Lake Road, Orlando, Florida 32819. The initial Registered Agent of the Corporation at the Registered Office shall be Leigh A. Williams, Esquire, 37 N. Orange Avenue, Suit 200, Orlando, FL 32801

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ARTICLE IX
INITIAL BOARD OF DIRECTORS

1. The Initial Board of Directors shall consist of two (2) Directors. The names and addresses of the persons who shall serve as directors of the Corporation until the first meeting of shareholders are:

Charles Whittall
7505 W Sand Lake Road
Orlando, FL 32819

CorpDirect Agents, Inc. (who is hereby designated as the Independent Director as defined herein)
515 East Park Avenue
Tallahassee, FL 32301

ARTICLE X
OFFICERS

President
Vice President
Secretary
Treasurer


Charles Whittall
Brian Holder
Brian Holder
Charles Whittall

ARTICLE XI
INCORPORATOR

The name and address of the Incorporator of the Corporation is:

Leigh A. Williams
37 N. Orange Avenue
Suite 200
Orlando, Florida 32801

Executed this 25th day of May 2007.


Leigh A. Williams, Incorporator

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IN WITNESS WHEREOF, the undersigned does hereby adopt, make and file these Amended & Restated Articles of Incorporation declaring and certifying that the facts stated herein are true, this the 25th day of May 2007.



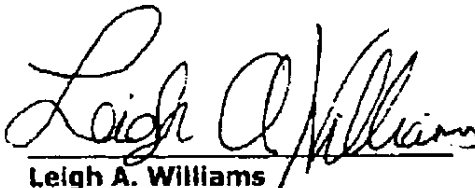
Charles Whittall, Director

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ACCEPTANCE OF REGISTERED AGENT

Having been named as Registered Agent and to accept service of process for the above stated Corporation at the place designated in this Certificate, I hereby accept the appointment as Registered Agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as Registered Agent.

Executed this 25th day of May 2007.


Leigh A. Williams
Registered Agent

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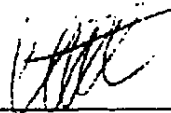
Time. Time is of the essence with respect to this Agreement.

Section 15.13

Entire Agreement. This Agreement contains all of the understandings and agreements between and among the Members with respect to the subject matter of this Agreement and the rights, interests and obligations of the Members with respect to the Company.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first written above.

Water Tower Retail, Inc.



Charles Whittall, Director

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**CERTIFICATE OF RESOLUTIONS
OF THE
MANAGING MEMBER
OF
WATER TOWER RETAIL, LLC**

The undersigned, being the all the Managing Member of **Water Tower Retail LLC, a Florida Limited Liability Company** (hereinafter referred to as the "Company"), hereby consent to, authorize, adopt and approve the following actions and resolutions:

RESOLVED: That Water Tower Retail, Inc., is the sole Managing Member of the Company:

FURTHER RESOLVED: That **Charles Whittail**, being a Director of the Managing Member of the Company is hereby authorized to execute any and all documents required to complete the transaction contemplated by the Contract and all Amendments thereto.

FURTHER RESOLVED: That the terms and conditions of all documents to be executed in connection with the transaction shall be determined by **Charles Whittail** ("Director") in his judgement and discretion, and the execution and delivery of any such document or instrument by Director shall constitute conclusive evidence that the terms and conditions contained in said documents or instruments have been approved by the Managing Member on behalf of the Company pursuant to this Resolution.

FURTHER RESOLVED: That the Director is hereby authorized on behalf Managing Member of the Company to take such other actions as it deems necessary to implement the foregoing resolutions, as conclusively evidenced by the taking of such actions by said Director on behalf of the Managing Member, including, but not limited to, the execution and delivery of any and all documents, Agreements, Deeds, Representations, Warranties, Guaranties, Indemnities, Certificates, Affidavits, Closing Statements, and any other instruments of any kind or nature whatsoever.

FURTHER RESOLVED: That any and all actions heretofore taken by the Director consistent with the foregoing resolutions including but not limited to any Amendments or Restatements of the Organizational Documents are hereby approved, ratified; confirmed in all respects and does not require shareholder approval.

FURTHER RESOLVED: That the Director of the Managing Member of the Company be, and he is hereby, authorized and directed to furnish to any interested person or entity a copy of the foregoing resolutions, to certify the same, and to certify that the provisions of the foregoing resolutions are in conformity with the Articles of Organization and Regulations of the Company and that said resolutions shall remain in full force and effect.

To: FL Dept. of State
Subject: 001500.69038

From: Tracy Spear

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Dated this 15th day of May 2007.

Water Tower Retail, Inc.

By: 

Charles Whittall, Director