

To: FL Dept. of State  
Subject: 001500.97109

From: Katie Wonsch

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Division of Corporations

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**COR AMND/RESTATE/CORRECT OR O/D RESIGN**

**WATER TOWER RETAIL, INC.**

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

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

The undersigned Incorporator delivers these Third 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.** (the "Corporation").

**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

(H) 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 V**  
**POWERS AND DUTIES**

Notwithstanding any other provision of these Articles of Incorporation, any other organizational documents or any provisions of law that empowers the Corporation, the following provisions shall be operative and controlling so long as the loan (the "Loan") by CIBC Inc., a Delaware Corporation, or its successors and/or assigns (collectively, the "Lender") to the LLC is outstanding:

1. The Corporation shall have no authority to perform any act in violation of any (a) applicable laws or regulations or (b) any agreement between the LLC and the Lender and the Corporation and the Lender.
2. The Corporation shall not:

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(a) make any loans to any shareholder or the Corporation's or any shareholder's Affiliates (as defined below);

(b) except as permitted by the Lender in writing, sell, encumber (except with respect to Lender) or otherwise transfer or dispose of all or substantially all of the properties of the Corporation (a sale or disposition will be deemed to be "all or substantially all of the properties of the Corporation" if the total value of the properties sold or disposed of in such transaction and during the twelve months preceding such transaction is sixty six and two thirds percent (66-2/3%) or more in value of the Corporation's total assets as of the end of the most recently completed corporate fiscal year);

(c) to the fullest extent permitted by law, dissolve, wind up or liquidate the Corporation;

(d) merge, consolidate or acquire all or substantially all of the assets of an Affiliate of same or other person or entity;

(e) change the nature of the business of the Corporation; or

(f) except as permitted by the Lender in writing, amend, modify or otherwise change these Articles of Incorporation (or, after securitization of the Loan, only if the Corporation receives (i) confirmation from each of the applicable rating agencies that such amendment, modification or change would not result in the qualification, withdrawal or downgrade of any securities rating and (ii) permission of the Lender in writing).

3. The Board of Directors of the Corporation shall at all times while the Loan is outstanding include at least one Independent Director (as defined below).

4. The Corporation shall not, and no person or entity on behalf of the Corporation shall, either with respect to itself or the LLC, without the prior written affirmative vote of one hundred percent (100%) of the Board of Directors, and the Independent Director (as defined below): (a) institute proceedings to be adjudicated bankrupt or insolvent; (b) consent to the institution of bankruptcy or insolvency proceedings against it or the LLC; (c) file a petition seeking, or consenting to, reorganization or relief under any applicable federal or state law relating to bankruptcy; (d) 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 their respective property; (e) make any assignment for the benefit of creditors; (f) admit in writing its or the LLC's inability to pay their respective debts generally as they become due or declare or effect a moratorium on its or the LLC's respective debts; or (g) take any corporate action in furtherance of any such action.

5. The Corporation shall have no indebtedness or incur any liability other than (a) unsecured debts and liabilities for trade payables and accrued expenses incurred in the ordinary course of its business, provided, however, that such unsecured indebtedness or liabilities (i) are in amounts that are normal and reasonable under the circumstances, but in no event to exceed in the aggregate three percent (3%) of the original principal amount of the Loan and (ii) are not evidenced by a note and are paid when due, but in no event for more than sixty (60) days from the date that such indebtedness or liabilities are incurred and (b) the Loan. No indebtedness of the Corporation shall be secured.

6. The Corporation shall at times observe the applicable legal requirements for the

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recognition of the Corporation as a legal entity separate from any Affiliates of same, including, without limitation, as follows:

(a) The Corporation shall maintain its principal executive office and telephone and facsimile numbers separate from that of any Affiliate of same 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 shared office space. Additionally, the Corporation shall use its own separate stationery, invoices and checks which reflects its separate address, telephone number and facsimile number.

(b) The Corporation shall maintain correct and complete financial statements, accounts, books and records and other entity documents separate from those of any Affiliate of same or any other person or entity. The Corporation shall prepare unaudited quarterly and annual financial statements, and the Corporation's financial statements shall substantially comply with generally accepted accounting principles.

(c) The Corporation shall maintain its own separate bank accounts, payroll and correct, complete and separate books of account.

(d) The Corporation shall file or cause to be filed its own separate tax returns.

(e) The Corporation shall hold itself out to the public (including any of its Affiliates' creditors) under the Corporation's own name and as a separate and distinct corporate entity and not as a department, division or otherwise of any Affiliate of same.

(f) The Corporation shall observe all customary formalities regarding the corporate existence of the Corporation, including holding meetings and maintaining current and accurate minute books separate from those of any Affiliate of same.

(g) The Corporation 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 of same shall be appointed or act as agent of the Corporation, other than, as applicable, a property manager with respect to the Property.

(h) Investments shall be made in the name of the Corporation directly by the Corporation or on its behalf by brokers engaged and paid by the Corporation or its agents.

(i) Except as required by Lender, the Corporation shall not guarantee, pledge or assume or hold itself out or permit itself to be held out as having guaranteed, pledged or assumed any liabilities or obligations of any Affiliate of the Corporation, nor shall it make any loan, except as permitted in the loan agreement with the Lender.

(j) The Corporation is and will be solvent.

(k) Assets of the Corporation shall be separately identified, maintained and segregated. The Corporation's assets shall at all times be held by or on behalf of the Corporation and if held on behalf of the Corporation 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) Corporation funds shall be deposited or invested in the Corporation's name, (II) Corporation funds shall not be commingled with the funds of any Affiliate of same or other

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person or entity, (iii) the Corporation shall maintain all accounts in its own name and with its own tax Identification number, separate from those of any Affiliate of same or other person or entity, and (iv) Corporation funds shall be used for the business of the Corporation.

(l) The Corporation 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 of same or other person or entity.

(m) The Corporation shall pay or cause to be paid its own liabilities and expenses of any kind, including but not limited to salaries of its employees, only out of its own separate funds and assets.

(n) The Corporation shall at all times be adequately capitalized to engage in the transactions contemplated at its formation.

(o) The Corporation shall not do any act which would make it impossible to carry on the ordinary business of the Corporation.

(p) All data and records (including computer records) used by the Corporation or any Affiliate of same in the collection and administration of any loan shall reflect the Corporation's ownership interest therein.

(q) None of the Corporation's funds shall be invested in securities issued by, nor shall the Corporation acquire the indebtedness or obligation of, any Affiliate of same.

(r) The Corporation 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 no less favorable to the Corporation than is obtainable in the market from a person or entity that is not an Affiliate of same.

(s) The Corporation shall correct any misunderstanding that is known by the Corporation regarding its name or separate identity.

For purposes of these Articles of Incorporation, the following terms mean as follows:

**"Affiliate"** means any person or entity, including, but not limited to, the LLC, which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a specified person or entity. For purposes hereof, the terms "control", "controlled", or "controlling" with respect to a specified person or entity 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) 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.

**"Independent Director"** shall mean a director of the Corporation who is not at the time of initial appointment and has not been at any time during the preceding five (5) years and shall not be at any time while serving as Independent Director: (a) a stockholder, director, officer, employee, partner or member of the Corporation or the Partnership or any affiliate of either of them; (b) a customer,

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supplier or other person who derives more than 10% of its purchases or revenues from its activities with the Corporation or the Partnership or any affiliate of either of them; (c) a person or other entity controlling or under common control with any such stockholder, director, officer, employee, partner, member, customer, supplier or other person; or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, customer, supplier or other person. (As used in this paragraph, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities by contract or otherwise).

7. Any indemnification obligation of the Corporation shall (a) be fully subordinated to the Loan and (b) not constitute a claim against the Corporation or its assets until such time as the Loan has been indefeasibly paid in accordance with its terms and otherwise has been fully discharged.

**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, Esq., 37 N. Orange Avenue, Suite 200, Orlando, FL 32801

**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**

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**ARTICLE X**  
**OFFICERS**

**President**  
**Vice President**  
**Secretary**  
**Treasurer**

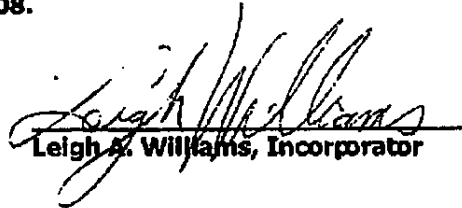
**Charles Whittall**  
**Brian Holder**  
**Brian Holder**  
**Charles Whittall**

**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 18<sup>th</sup> day of December 2008.

  
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 18<sup>th</sup> day of December 2008.

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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 18<sup>th</sup> day of December 2008.



Leigh A. Williams  
Registered Agent