

POS00001229SS

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP ☐ WAIT ☐ MAIL

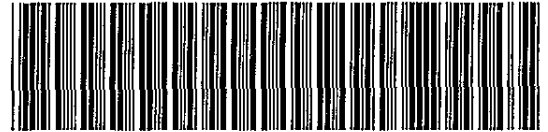
(Business Entity Name)

(Document Number)

Certified Copies _____ Certificates of Status _____

Special Instructions to Filing Officer:

Office Use Only



500061669095

11/29/05--01004--005 **35.00

FILED
05 NOV 29 PM 12:49
CLERK OF STATE
TALLAHASSEE, FLORIDA

By Amen

LAW OFFICES
ROBERT S. FORMAN, P.A.

SUITE 2800
2101 WEST COMMERCIAL BOULEVARD
FORT LAUDERDALE, FLORIDA 33309

ROBERT S. FORMAN
MARK J. LYNN

OF COUNSEL
VINCENT J. ALTINO, P.A.
BERMAN, KEAN & RIGUERA, P.A.

TELEPHONE (954) 735-0000
TELEFAX (954) 735-3636

November 22, 2005

Department of State
Division of Corporations
Corporate Filings
P.O. Box 6327
Tallahassee, FL 32314

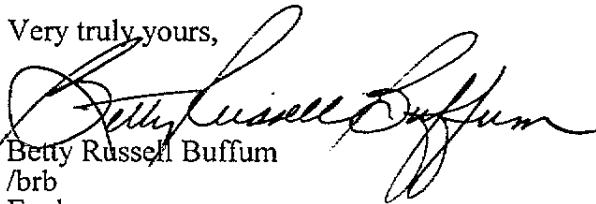
RE: Marietta Manager Corp.

Dear Sir:

Please file the enclosed Articles of Amendment to the Articles of Incorporation of Marietta Manager Corp. Our trust account check in the amount of \$35.00 is enclosed to cover the filing fee.

Please provide us with confirmation of the filing of the Amendment.

Very truly yours,



Betty Russell Buffum
/brb

Enclosures

ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
MARIETTA MANAGER CORP.

DOCUMENT NO. P05000122955

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

05 NOV 29 PM 12:49

FILED

Pursuant to the provisions of Section 607.1006, Florida Statutes, this Florida Profit Corporation adopts the following amendment to its Articles of Incorporation:

ARTICLE III, "BUSINESS AND PURPOSE", is hereby amended and replaced in its entirety with the following provision:

Notwithstanding any other provision of this Certificate of Incorporation, the nature of the business and of the purposes to be conducted and promoted by the corporation (the "Corporation") is to engage solely in the activity of acting as Manager of Marietta Medical Park, LLC whose purpose is to acquire from Commons Georgia I, L.C. certain parcels of real property, together with all improvements located thereon, in the City of Marietta, State of Georgia (the "Property") and own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property. The corporation shall exercise all powers enumerated in Chapter 607, Florida Statutes necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

A. CERTAIN PROHIBITED ACTIVITIES

Notwithstanding any other provision of this Certificate of Incorporation, the Corporation shall only cause the Company to incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien exists on any portion of the Property, the Corporation shall not and shall not cause the Company to incur, assume, or guaranty any other indebtedness. For so long as the Company remains mortgagor of the Property, the Corporation shall not cause the Company to dissolve, liquidate, merge or sell substantially all of its assets. For so long as a mortgage lien exists on any portion of the Property, the Corporation shall not voluntarily commence a case with respect to itself or cause the Company to voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as a mortgage lien exists on any portion of the Property, no material amendment, including Sections _____ or amendments inconsistent with such sections, to this certificate of incorporation or to the Corporation's By-Laws may be made without first obtaining approval of the mortgagees holding first mortgages on any portion of the Property, or, after the securitization of the Loan, only if the Company receives (i) confirmation from each of the applicable rating agencies that such amendment would not result in the qualification, withdrawal or downgrade of any securities rating and (ii) approval of such amendment by the mortgagee holding the First Mortgage.

No transfer of any direct or indirect ownership interest in the Corporation may be made such that the transferee owns, in the aggregate with the ownership interests of its affiliates and family members in the Corporation, more than a forty-nine percent (49%) interest in the Corporation (or such other interest as specified in the Commitment Letter or by a rating agency), unless (i) such transfer is conditioned upon the delivery of an acceptable non-consolidation opinion to the mortgagee holding the First Mortgage and to any applicable rating agency concerning, as applicable, the Corporation, the new transferee and/or their respective owners and (ii) the applicable rating agencies confirm that the transfer will not result in a qualification, withdrawal or downgrade of any securities rating.

B. INDEMNIFICATION

Notwithstanding any other provision of this Certificate of Incorporation, any indemnification of the Corporation's directors and officers shall be fully subordinated to any obligations respecting the Company or the Property (including, without limitation, the First Mortgage) and such indemnification shall not constitute a claim against the Corporation or the Company in the event that cash flow in excess of amounts necessary to pay holders of such obligations is insufficient to pay such obligations.

C. SEPARATENESS COVENANTS

Notwithstanding any other provision of this Certificate of Incorporation, for so long as the First Mortgage exists on any portion of the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in the certificate of incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate or, if it shares office space with its parent or any affiliate, it shall allocate fairly and reasonably any overhead and expense for shared office space.
2. It will not engage, directly or indirectly, in any business other than to serve as the Manager of the Company and it will conduct and operate its business as presently conducted and operated.
3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities.
4. It will not enter into any contract or agreement with its parent, any affiliate of the Corporation or any constituent party of the Corporation except upon terms and conditions that are commercially reasonable and substantially similar to those that would be available on an arms-length basis with unrelated third parties.

5. It has not incurred and will not incur any indebtedness and will not permit the Company to incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the indebtedness secured by the mortgage lien and (ii) trade payables or accrued expenses incurred in the ordinary course of the business of operating the property with trade creditors and in amounts as are normal and reasonable under the circumstances. No indebtedness other than the indebtedness secured by the mortgage lien may be secured (subordinate or *pari passu*) by the Property.

6. It has not made and will not make any loans or advances to any third party including its parent, any affiliate of the Corporation or constituent party of the Corporation and shall not acquire obligations or securities of its affiliates.

7. It is and will remain solvent and will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

8. It has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and it will not amend, modify or otherwise change the articles of incorporation or By-Laws of the Corporation without the prior written consent of the mortgage lien holder or, after the securitization of the Loan, only if the Corporation receives (i) confirmation from each of the applicable rating agencies that such amendment would not result in the qualification, withdrawal or downgrade of any securities rating and (ii) approval of such amendment by the mortgagee holding the First Mortgage.

9. It will maintain all of its books, records, financial statements and bank accounts separate from those of its parent, its affiliates and any constituent party and the Corporation will file its own separate tax returns. It shall maintain its books, records, resolutions and agreements as official records.

10. It will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including its parent, any affiliate of the Corporation or any constituent party of the Corporation), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct and operate its business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks.

11. It will 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.

12. Neither the Corporation nor any constituent party will seek or permit the dissolution, winding up, liquidation, consolidation or merger in whole or in part, of the Corporation, or acquire by purchase or otherwise all or substantially all the

business or assets of, or any stock or other evidence of beneficial ownership of any other person or entity.

13. It will not commingle the funds and other assets of the Corporation with those of its parent, any affiliate or constituent party, or any affiliate of any constituent party, or any other person.

14. It has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual asset or assets, as the case may be, from those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person.

15. It shall not pledge its assets and does not and will not hold itself out to be responsible for the debts or obligations of any other person.

16. It shall pay any liabilities out of its own funds, including salaries of any employees.

17. The Corporation shall maintain a sufficient number of employees in light of its contemplated business operations.

18. The Corporation shall not guarantee or become obligated for the debts of any other entity or person.

19. The Corporation shall not form, acquire or hold any subsidiary other than the Company.

20. The Corporation shall cause the Company to comply with the provisions of Section 3.3 of its limited liability agreement.

For purpose of this Article III, the following terms shall have the following meanings:

“affiliate” means any person controlling or controlled by or under common control with the Corporation, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from the Corporation, its parent or any affiliate. For purposes of this definition, “control” when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“parent” means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

D. VOTING

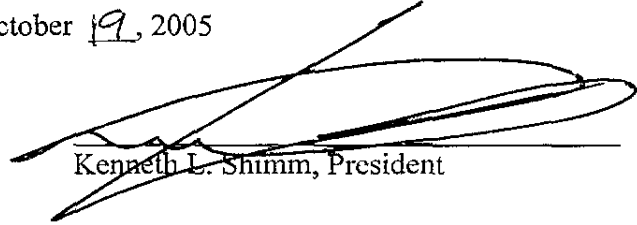
When voting on matters concerning the Company, notwithstanding that the Company is not then insolvent, the Corporation shall take into account the interest of the Company's creditors, as well as those of its members to the maximum extent consistent with applicable law.

To the extent that there is any conflict between the terms of this Amendment and the terms of the original Articles of Incorporation, the terms of this Amendment shall prevail.

This Amendment was approved by the shareholders. The number of votes cast for the amendment by the shareholders was sufficient for approval.

(Signature on following page)

The date of Amendment approval: October 19, 2005

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Kenneth L. Shimm, President