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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ls 10/28/05  
Amend

**COVER LETTER**

**TO:** Amendment Section  
Division of Corporations

**NAME OF CORPORATION:** Immokalee Holdings, Inc.

**DOCUMENT NUMBER:** P05000138247

The enclosed *Articles of Amendment* and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

Andrew J Niewiarowski

(Name of Contact Person)

Immokalee Holdings, Inc

(Firm/ Company)

899 S Plymouth #105

(Address)

Chicago IL 60605

(City/ State and Zip Code)

For further information concerning this matter, please call:

Andrew J Niewiarowski

(Name of Contact Person)

at ( 312 ) 986-1505

(Area Code & Daytime Telephone Number)

Enclosed is a check for the following amount:

☒ \$35 Filing Fee

☐ \$43.75 Filing Fee &  
Certificate of Status

☐ \$43.75 Filing Fee &  
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☐ \$52.50 Filing Fee  
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Certified Copy  
(Additional Copy  
is enclosed)

**Mailing Address**

Amendment Section  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

**Street Address**

Amendment Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

Articles of Amendment  
to  
Articles of Incorporation  
of

FILED

05 OCT 27 AM 11:16

Immokalee Holdings, Inc.

(Name of corporation as currently filed with the Florida Dept. of State)

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

P05000138247

(Document number of corporation (if known))

Pursuant to the provisions of section 607.1006, Florida Statutes, this **Florida Profit Corporation** adopts the following amendment(s) to its Articles of Incorporation:

**NEW CORPORATE NAME (if changing):**

(Must contain the word "corporation," "company," or "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.")  
(A professional corporation must contain the word "chartered", "professional association," or the abbreviation "P.A.")

**AMENDMENTS ADOPTED- (OTHER THAN NAME CHANGE)** Indicate Article Number(s) and/or Article Title(s) being amended, added or deleted: **(BE SPECIFIC)**

See Attached for amendments adopted

(Attach additional pages if necessary)

If an amendment provides for exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself: (if not applicable, indicate N/A)

N/A

The date of each amendment(s) adoption: 10/26/05

Effective date if applicable: 10/06/05  
(no more than 90 days after amendment file date)

Adoption of Amendment(s) (CHECK ONE)

- ☐ The amendment(s) was/were approved by the shareholders. The number of votes cast for the amendment(s) by the shareholders was/were sufficient for approval.
- ☐ The amendment(s) was/were approved by the shareholders through voting groups. *The following statement must be separately provided for each voting group entitled to vote separately on the amendment(s):*

"The number of votes cast for the amendment(s) was/were sufficient for approval by  
\_\_\_\_\_.  
(voting group)"

- ☐ The amendment(s) was/were adopted by the board of directors without shareholder action and shareholder action was not required.
- ☒ The amendment(s) was/were adopted by the incorporators without shareholder action and shareholder action was not required.

Signature Andrew J. Niewiariwski  
(By a director, president or other officer - if directors or officers have not been selected, by an incorporator - if in the hands of a receiver, trustee, or other court appointed fiduciary by that fiduciary)

Andrew J. Niewiariwski  
(Typed or printed name of person signing)

President  
(Title of person signing)

**FILING FEE: \$35**

1. Sections 2(b) and 2(c) - on the first line, change "Bylaws" to "Articles of Incorporation."
2. Section 2(c)(iii) - insert "corporation or the" prior to "LLC, in whole or in part."
3. Section 2(c)(iv) - insert "or cause the LLC to do so" at the end.
4. Section 2(c)(v) - change "Article IX of the Bylaws" to "this Article  
III of these Articles of Incorporation or the Operating Agreement of the LLC."
5. Section 5 should read as follows:

"The Corporation shall not, without the affirmative vote of 100 percent of the Board of Directors, institute, with respect to either the Corporation or the LLC, proceedings to be adjudicated bankrupt or insolvent; or consent to the institution of bankruptcy or insolvency proceedings against it; or file a petition for itself or the LLC 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) or a substantial part of its property; 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 declare or effect a moratorium on its debts; or take any corporate action in furtherance of any such action."

### ARTICLE III - Purpose

#### CORPORATE LIMITATIONS/GOVERNANCE

Notwithstanding any provision herein to the contrary, the following provisions shall apply in all circumstances so long as the corporation is Manager of Immokalee Apartments, LLC (the "LLC"):

Section 1. Purpose. The nature of the business and of the purposes to be conducted and promoted by the corporation is to engage solely in the following activities:

(a) To act as the Manager of the LLC, the purpose of which is to acquire certain parcels of real property, together with all improvements located thereon, commonly known as Immokalee Apartments, 601 W. Florida Avenue, in the City of Immokalee, State of Florida (collectively, the "Property").

(b) As Manager of the LLC, to own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

(c) As Manager of the LLC, to exercise all powers enumerated for a Manager in the Limited Liability Company Act of Florida necessary or convenient to the conduct, promotion or attainment of the business or purposes of the LLC.

Notwithstanding anything contained herein to the contrary, the corporation shall not engage in any business, and it shall have no purpose, unrelated to the LLC and the Property and shall not acquire any real property or own assets other than those related to the Property and/or otherwise in furtherance of the purposes of the LLC.

#### Section 2. Manager Restrictions

(a) The corporation shall not permit anyone other than the corporation to act as Manager of the LLC.

(b) Anything in these Articles of Incorporation to the contrary notwithstanding, the corporation shall have no authority to perform any act in violation of any (i) applicable laws or regulations or (ii) any agreement ("Loan Documents") between the LLC and CIBC Inc. or its successors or assigns (collectively, the "Lender").

(c) Anything in these Articles of Incorporation to the contrary notwithstanding, so long as any indebtedness remains outstanding by the LLC to the Lender, the corporation, as Manager of the LLC shall not:

(i) make any loans to the members of the LLC ("Members") or their Affiliates;

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

(iii) dissolve, wind-up, or liquidate the corporation or the LLC, in whole or in part;

(iv) merge, consolidate or acquire substantially all the assets of another person or entity or cause the LLC to do so;

(v) change the nature of the business conducted by the LLC; or

(vi) except as permitted by the Lender in writing, amend or modify this Article III of these Articles of Incorporation or the Operating Agreement of the LLC.

(d) The corporation, on behalf of itself or the LLC, shall only incur indebtedness in an amount necessary to acquire, operate and maintain the Property. The corporation, on behalf of itself or the LLC shall have no indebtedness or incur, assume or guaranty any liability other than (i) debts and liabilities for trade payables and accrued expenses incurred in the ordinary course of business of operating the Property; provided, however, that such unsecured indebtedness or liabilities (a) are in amounts that are normal and reasonable under the circumstances, but in no event to exceed two percent (2.0%) of the original amount of the Loan, and (c) are not evidenced by a note and are paid when due, but in no event more than sixty (60) days from the date that any such indebtedness or liabilities are incurred and (ii) the loan (the "Loan") made or to be made to the corporation by the Lender. No indebtedness other than the Loan shall be secured (senior, subordinated, or pari passu) by the Property.

Section 3. Limitation on Indemnification. Any indemnification obligation of the corporation shall be fully subordinated to any obligations respecting the Properties and shall not constitute a claim against the corporation in the event that cash flow in excess of amounts necessary to pay holders of such obligations is insufficient to pay such obligations.

Section 4. Separateness Covenants. For so long as any mortgage lien exists on the Property, in order to preserve and ensure its separate and distinct identity, in addition to the other provisions set forth in this Agreement, the corporation shall conduct its affairs in accordance with the following provisions:

(a) The corporation shall either (i) maintain its principal executive office and telephone and facsimile numbers separate from that of any Affiliate of the corporation or of any owner of any equity interest in the corporation or any Affiliate ("Equity Holder") and shall conspicuously identify such office and numbers as its own, or (ii) 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 reflect its name, 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 the corporation or of any Equity Holder 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 entity and not as a department, division or otherwise of any Affiliate of the corporation or of any Equity Holder.

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

(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 the corporation or of any Equity Holder shall be appointed or act as agent of the corporation, other than as a property manager or leasing agent with respect to the Property.

(h) No 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.

(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 Equity Holder or any Affiliate of the corporation, nor shall it make any loan, except as permitted in the Loan Documents.

(j) The corporation 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) funds of the corporation shall be deposited or invested in the corporation's name, (ii) funds of the corporation shall not be commingled with the funds of any Affiliate of the corporation or of any Equity Holder, (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 the corporation or of any Equity Holder, and (iv) funds of the corporation shall be used only 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 the corporation or of any Equity Holder.

(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 the corporation in the collection and administration of any loan shall reflect the corporation's ownership interest therein.

(q) Funds of the corporation shall be invested in securities issued by, nor shall the corporation acquire the indebtedness or obligation of, an Affiliate of the corporation or of an Equity Holder.

(r) The corporation shall maintain an arm's length relationship with each of its Affiliates and may 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 the corporation or of any Equity Holder.

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

Section 5. Bankruptcy. The Corporation shall not, without the affirmative vote of 100 percent of the Board of Directors, institute, with respect to either the Corporation or the LLC, proceedings to be adjudicated bankrupt or insolvent; or consent to the institution of bankruptcy or insolvency proceedings against it; or file a petition for itself or the LLC 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) or a substantial part of its property; 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 declare or effect a moratorium on its debts; or take any corporate action in furtherance of any such action."

Section 6. Definitions. The following definitions apply for purposes of this Article:

"Affiliate" of another Person means: (a) any entity or individual that directly or indirectly controls or holds the power to vote 10% or more of the outstanding voting securities of the Person in question; (b) any Person 10% or more of whose voting securities are directly or indirectly owned, controlled or held with power to vote, by such other Person; (c) any Person directly or indirectly controlling, controlled by, or under common control with such other Person; (d) any officer, director or partner of such other Person; and (e) if such other Person is an officer, director or partner, any company for which such Person acts in any such capacity.

"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.