

POS000150719

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐

PICK-UP

☐

WAIT

☐

MAIL

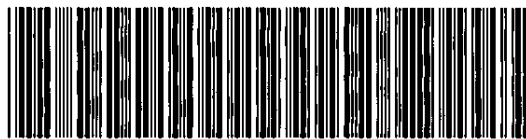
(Business Entity Name)

(Document Number)

Certified Copies _____ Certificates of Status _____

Special Instructions to Filing Officer:

Office Use Only



300092291853

Amend

03/23/07--01001--009 **52.50

FILED

2001 MAR 26 PM 4:04
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

RECEIVED

07 MAR 22 PM 3:51
DEPARTMENT OF STATE
DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA

APR 2/27/07

*00789, 00579, 00672



Fort Lauderdale
Jacksonville
Los Angeles
Madison
Miami
New York
Orlando
Tallahassee
Tampa
Tysons Corner
Washington, DC
West Palm Beach

Clifford W. Mayhall
Suite 1200
106 East College Avenue
Tallahassee, FL 32301

www.akerman.com

850 425 1647 tel 850 325 2547 fax
cliff.mayhall@akerman.com

March 22, 2007

VIA HAND DELIVERY

Florida Department of State
Division of Corporations
2661 Executive Center Circle
Clifton Building
Tallahassee, Florida 32301

Re: Public Records Request

To Whom It May Concern:

Pursuant to chapter 119.07, Florida Statutes, I request that the Florida Department of State, Division of Corporations, provide me with the following public record:

- A certificate of status and a certified copy of the Amended and Restated Articles of ~~Organization~~ for University Towers Holding Corp., document number P05000150719.

Please contact me at 425.1676 when these documents are available for pick-up and the total cost to process this request. Thank you for your attention to this request, and with best regards, I am

Very truly yours,

Daphne E. Gilbert
Legal Administrative Assistant to
Clifford W. Mayhall

Enclosure



Fort Lauderdale
Jacksonville
Los Angeles
Madison
Miami
New York
Orlando
Tallahassee
Tampa
Tysons Corner
Washington, DC
West Palm Beach

Clifford W. Mayhall
Suite 1200
106 East College Avenue
Tallahassee, Florida 32301
www.akerman.com
850 425 1647 *tel* 850 325 2547 *fax*
cliff.mayhall@akerman.com

March 26, 2007

VIA HAND DELIVERY

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

Attn: Annette Ramsey

**Re: University Towers Holding Corp.
Document No. P05000150719**

Dear Ms. Ramsey:

The enclosed Articles of Amendment for the above referenced Florida corporation and the fee are submitted for filing.

Please return all correspondence concerning this matter to the Akerman Senterfitt box and please contact me at 850-425-1647 when ready for pick-up.

A check in the amount of \$52.50 for the Filing Fee, Certificate of Status, and Certified Copy has been provided. Thank you for your assistance and patience with this matter, and please contact me with any questions.

Very truly yours,

Clifford W. Mayhall

FILED

**ARTICLES OF AMENDMENT TO ARTICLES OF INCORPORATION OF
UNIVERSITY TOWERS HOLDING CORP.**

2007 MAR 26 PM 4: 04

Document No. P05000150719

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to the provisions of section 607.1006, Florida Statutes, the undersigned sole shareholder and initial director adopts the following amendments to its Articles of Incorporation:

AMENDMENTS ADOPTED

1. Article VII is amended to read as follows:

The business of the Corporation shall be managed by a Board of Directors consisting of at least two persons, including Independent Director, the exact number to be determined from time to time in accordance with the By-Laws. The initial Board of Directors of the Company shall consist of one person, such person being Hurley H. Booth, Jr., 625 East Tennessee Street, Suite 200, Tallahassee, Florida 32308.

2. Article X, Section A. is amended to read as follows:

A. Subject to Article XII(G), the Corporation hereby indemnifies and agrees to hold harmless from claim, liability, loss or judgment any Director or officer made a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action, suit or proceeding by or on behalf of the Corporation to procure a judgment in its favor), brought to impose a liability or penalty on such person for an act alleged to have been committed by such person in his capacity as Director, officer, employee or agent of the Corporation or any other corporation, partnership, joint venture, trust or other enterprise which he served as such at the request of the Corporation, against judgment, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and reasonably incurred as a result of such action, suit, or proceeding or any appeal thereof, if such person acted in good faith in the reasonable belief that such action was in, or not opposed to, the best interests of the Corporation, and in criminal actions or proceedings, without reasonable ground for belief that such action was unlawful. The termination of any such action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not create a presumption that any such Director or officer did not act in good faith in the reasonable belief that such action was in, or not opposed to, the best interests of the Corporation. Such person shall not be entitled to indemnification in relation to matters as to which such person has been adjudged to have been guilty of gross negligence or willful misconduct in the performance of his or her duties to the Corporation.

3. Article XII is amended to read as follows:

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, and NorthMarq Capital, Inc., a Minnesota corporation, or its successors and/or assigns (collectively, the "Lender") to University Towers Apartments, L.L.C. (the "Company"), is outstanding:

A. The sole purpose of the Corporation has been since the date of its formation and shall continue to be to acquire, manage, own and hold the membership interest in the Company, whose sole purpose is to acquire, own, hold, maintain and operate the property that is commonly known as University Towers, located at 415 Chapel Drive, Tallahassee, Leon County, Florida (the "Property"), together with such other activities as may be necessary or advisable in connection with such limited purpose. The Corporation has not and shall not engage in any business, and it has not and shall not have any purpose, unrelated to the foregoing purpose and has not and shall not acquire any real property or own assets other than those in furtherance of the limited purposes of the Corporation.

B. 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 Company and the Lender or the Corporation and the Lender.

C. The Corporation has not since the date of its formation and shall not:

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

(2) except as permitted by the Lender in writing, cause or permit the Company to sell, encumber (except with respect to Lender) or otherwise transfer or dispose of all or substantially all of the properties of the Company (a sale or disposition will be deemed to be "all or substantially all of the properties of the Company" 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 Company's total assets as of the end of the most recently completed corporate fiscal year);

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

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

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

(6) 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).

D. The Corporation shall not, and no person or entity on behalf of the Corporation shall, either with respect to itself or the Company, without the prior written affirmative vote of one hundred percent (100%) of the Board of Directors and the Independent Director: (1) institute proceedings to be adjudicated bankrupt or insolvent; (2) consent to the institution of bankruptcy or insolvency proceedings against it or the Company; (3) file a petition seeking, or consenting to, reorganization or relief under any applicable federal or state law relating to bankruptcy; (4) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Corporation or the Company or a substantial part of their respective property; (5) make any assignment for the benefit of creditors; (6) admit in writing its or the Company's inability to pay their respective debts generally as they become due or declare or effect a moratorium on its or the Company's respective debts; or (7) take any corporate action in furtherance of any such action; provided however, that none of the above (1) through (7) may be taken unless at the time such action is voted upon there is at least one Independent Director.

E. The Corporation shall have no indebtedness or incur any liability other than 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 two percent (2%) of the outstanding 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. No indebtedness of the Corporation shall be secured.

F. The Corporation has since the date of its formation, other than with respect to (1) immediately below, and shall at all times observe the applicable legal requirements for the recognition of the Corporation as a legal entity separate from any Affiliates of same, including, without limitation, as follows:

(1) At least one (1) of the directors of the Corporation shall be an Independent Director. Independent Director means a natural person who has not been, and during the continuation of his or her services as Independent Director (i) except in the capacity as an Independent Director of the Corporation, is not a present or former employee, officer, director, shareholder, partner, member or agent of any member of the Company (individually, a "Member" and collectively

with all other members of the Company, (the "Members"), the Company or any Affiliate of either of same, (ii) is not a present or former customer or supplier of any Member, the Company or any Affiliate of either of same, or other person or entity who derives or is entitled to derive any of its profits or revenues or any payments (other than any fee paid to such director as compensation for such director to serve as an Independent Director) from any Member, the Company or any Affiliate of either of same, (iii) is not (and is not affiliated with an entity that is) a present or former, accountant, advisor, attorney or consultant to any Member, the Company or any Affiliate of either of same, (iv) is not a spouse, parent, child, grandchild or sibling of, or otherwise related to (by blood or by law), any of (i), (ii) or (iii) above, and (v) is not affiliated with a person or entity of which any Member, the Company or any Affiliate of either of same is a present or former customer or supplier, provided, however, that an entity that provides independent directors as a service for a fee is not prohibited under this paragraph from providing one or more independent directors to the Corporation, provided further, however, that in connection with mezzanine financing the Corporation (and its Affiliates) shall not share the same Independent Director with the mezzanine borrower (and its Affiliates). In the event of the death, incapacity, resignation or removal of an Independent Director, the Board of Directors of the Corporation shall promptly appoint a replacement Independent Director and no action requiring the consent of the Independent Director shall be taken until a replacement Independent Director has been appointed. In addition, no Independent Director may be removed unless his or her successor satisfying the definition hereunder has been appointed and has accepted such appointment.

(2) 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 reflect its separate address, telephone number and facsimile number.

(3) The Corporation shall maintain correct and complete financial statements, accounts, books and records and other entity documents separate from those of any Affiliate 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.

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

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

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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 person or entity, including any Affiliate of the Corporation, nor shall it make any loan, except as permitted in the loan agreement with the Lender.

(11) The Corporation is and will be solvent.

(12) 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 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.

(13) 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.

(14) 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, and shall maintain a sufficient number of employees in light of its contemplated business operations.

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

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

(17) 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.

(18) 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.

(19) When acting on matters subject to the vote of the Directors, notwithstanding that the Corporation is not then insolvent, the Directors shall take into account the interest of the Corporation's creditors, to the maximum extent consistent with applicable law.

(20) 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 same.

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

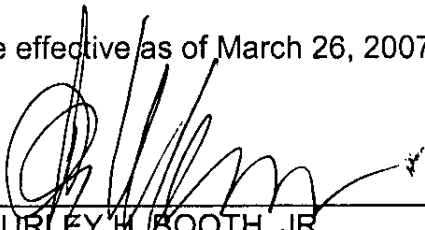
Each of (2) through (21) immediately above are also applicable to the period from the date of the Corporation's formation to the date of this Agreement.

For purposes of these Articles of Incorporation, Affiliate means any person or entity, including, but not limited to, the Company, 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.

G. Any indemnification obligation of the Corporation shall (1) be fully subordinated to the Loan and (2) 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.

Upon being executed by the sole shareholder and the Corporation's initial director, this Organizational Action shall be effective as of March 26, 2007.



HURLEY H. BOOTH, JR.
Director