

P06000155402

Florida Department of State
Division of Corporations
Public Access System

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H06000298554 3)))



H060002985543ABCB

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

FAX

To:

Division of Corporations
Fax Number : (850) 205-0381

From:

Account Name : COHEN, NORRIS, SCHERER, WEINBERGER & WOLMER
Account Number : I20020000140
Phone : (561) 844-3600
Fax Number : (561) 842-4104

Attn: Roger Stanton

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

06 DEC 20 PM 12:04

FILED

FLORIDA PROFIT/NON PROFIT CORPORATION

ESPERANZA SPECIAL MEMBER, INC.

Certificate of Status	1
Certified Copy	1
Page Count	06
Estimated Charge	\$87.50

Electronic Filing Menu

Corporate Filing Menu

Help

MRD 12/21

12/20/2006

H06000298554 3
FILED

**ARTICLES OF INCORPORATION
OF
ESPERANZA SPECIAL MEMBER, INC.**

05 DEC 20 PM 12: 04

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

THE UNDERSIGNED, acting as incorporator of a Corporation under the Florida Business Corporation Act, F.S. Chapter 607, adopts the following Articles of Incorporation for such Corporation:

ARTICLE I - Name and Address

The name of this Corporation is: ESPERANZA SPECIAL MEMBER, INC. ("Corporation") and the principal place of business and mailing address of this Corporation shall be 1818 S. Australian Avenue, Suite 410, West Palm Beach, Florida 33409.

ARTICLE II - Commencement and Duration

This Corporation shall become effective on date of filing and the duration of this Corporation is perpetual.

ARTICLE III - Purpose

The nature of the business and of the purposes to be conducted and promoted by the Corporation is to engage solely in the activity of acting as the outside member of Esperanza, LLC, a Florida limited liability company (the "Limited Liability Company"), whose purpose is to acquire from Willow Lake Apartments, LLLP, a Florida limited liability limited partnership, certain parcels of real property located in the City of Lake Worth, Florida, commonly known as Willow Lake Apartments (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 the General Corporation Law of Florida necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

ARTICLE IV - Stock

The aggregate number of share which this Corporation shall have authority to issue is One Thousand (1,000) shares of common voting stock at \$Zero par value per share.

ARTICLE V - Initial Office and Agent

The street address of this Corporation's initial registered office in Florida is 712 US Highway One, Suite 400, North Palm Beach, FL 33407, and the name of its initial registered agent at that address is ROGER C. STANTON.

Roger C. Stanton, Esq.
FL Bar No. 0086303
Cohen Norris et al.
712 US Highway One, Suite 400
North Palm Beach, FL 33460
(561) 844-3600

H06000298554 3

ARTICLE VI – Initial Directors

The name and address of the initial directors are:

LENNARD KLIGLER	1818 S. Australian Avenue, Suite 410 West Palm Beach, Florida 33409
ARNOLD MULLEN	3801 PGA Blvd., #910 Palm Beach Gardens, FL 33418
MARIE KAMPHUIS	Construction Lending Group 2430-B East Commercial Blvd. Ft. Lauderdale, FL 33308

ARTICLE VII - Incorporator

The name and address of the incorporator is:

<u>Name</u>	<u>Address</u>
ROGER C. STANTON	712 US Highway One, Suite 400 North Palm Beach, Florida 33408

ARTICLE VIII

Common Directors - Transactions Between Corporations

No contract or other transaction between this Corporation and one or more of its Directors or any other Corporation, firm, association or entity in which one or more of its Directors are directors or officers or are financially interested, shall either be void or voidable because of such relationship or interest, if: (a) the fact such relationship or interest is disclosed or known to the Board of Directors or committee which authorizes, approves or ratifies the contractor transaction by vote or consent sufficient for the purpose without counting the votes or consents of such interested Director; or (b) the fact of such relationship or interest is disclosed or known to the Shareholders entitled to vote and they authorize, approve or ratify such contract or transaction by vote or written consent; or (c) the contract is fair and reasonable to the Corporation.

Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies such contract or transaction.

ARTICLE IX - Indemnification

Subject to the qualifications and limitations under Florida Statutes, the Corporation shall indemnify its officers and directors and former officers and directors against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement arising out of his or her services as an officer or director of the Corporation.

Notwithstanding any provision hereof to the contrary, any such indemnification shall be fully subordinated to any obligations respecting the Limited Liability Company or the Property and shall

not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations.

ARTICLE X

Borrowing Limitations; Bankruptcy Provisions

Notwithstanding any provision hereof to the contrary, the following shall govern: The Corporation shall only incur or cause the Limited Liability 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 Limited Liability Company to incur, assume, or guaranty any other indebtedness. The Corporation shall not and shall not cause the Limited Liability Company to consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (i) the entity (if other than the Corporation or Limited Liability Company) formed or surviving such consolidation or merger or that acquired by conveyance or transfer of the properties and assets of the Corporation or Limited Liability Company substantially as an entirety (a) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (b) shall include in its organizational documents the same limitations set forth in this Article X and in Article XII, and (c) shall expressly assume the due and punctual performance of the Corporation's obligations; and (ii) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this Corporation or the Limited Liability Company and be continuing. 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 Limited Liability 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, without first obtaining approval of the mortgagees holding first mortgages on any portion of the Property (i) no material amendment to this certificate of incorporation or to the Corporation's By-Laws nor to the articles of organization of the Limited Liability Company may be made without first obtaining approval of the mortgagees holding first mortgages on any portion of the Property and (ii) in the event the life of the Limited Liability Company is not continued, the Corporation shall not cause the Limited Liability Company to liquidate the Property.

ARTICLE XI - VOTING

Notwithstanding any provision hereof to the contrary, when voting on matters concerning the Limited Liability Company, notwithstanding that the Limited Liability Company is not then insolvent, the Corporation shall take into account the interest of the Limited Liability Company's creditors, as well as those of its members.

ARTICLE XII - Separateness Covenants

Notwithstanding any provision hereof to the contrary, for so long as any mortgage lien 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 this 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 and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain separate corporate records and books of account from those of its parent and any affiliate.

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. The Board of Directors shall include at least one (1) individual who is an Independent Director. As used herein, an "Independent Director" shall be an individual who: (i) is not and has not been employed by the Corporation or any of its respective subsidiaries or affiliates as a director, officer or employee within the five years immediately prior to such individual's appointment as an Independent Director, (ii) is not (and is not affiliated with a company or firm that is) a significant advisor or consultant to the Corporation or any of its subsidiaries or affiliates, (iii) is not affiliated with a significant customer or supplier of the Corporation or any of its subsidiaries or affiliates; (iv) is not affiliated with a company of which the Corporation or any of its subsidiaries or affiliates is a significant customer or supplier; (v) does not have significant personal service contract(s) with the Corporation or any of its subsidiaries or affiliates; (vi) is not affiliated with a tax exempt entity that receives significant contributions from the Corporation or any of its subsidiaries or affiliates; (vii) is not a beneficial owner at the time of such individual's appointment as an Independent Director, or at any time thereafter while serving as Independent Director, of such number of shares of any classes of common stock of the Corporation the value of which constitutes more than 5% of the outstanding common stock of the Corporation; and (viii) is not a spouse parent, sibling or child of any person described by (i) through (vii).

4. It shall not commingle assets with those of its parent and any affiliate.

5. It shall conduct its own business in its own name.

6. It shall maintain financial statements separate from its parent and any affiliate.

7. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.

8. It shall maintain an arm's length relationship with its parent and any affiliate.

9. It shall not guarantee or become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.

10. It shall use stationery, invoices and checks separate from its parent and any affiliate.

11. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate.

12. It shall hold itself out as an entity separate from its parent and any affiliate."

For purposes of this **Article XII**, the following terms shall have the following meanings:

"Affiliate" or "affiliate" means any person controlling or controlled by or under common control with the parent, 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 this 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" or "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" or "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.

DATED this 20th day of December, 2006.



ROGER C. STANTON,
Incorporator

FILED
06 DEC 20 PM 12:04
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

**CERTIFICATE DESIGNATING PLACE OF
BUSINESS OR DOMICILE FOR THE SERVICE
OF PROCESS WITHIN THIS STATE NAMING
AGENT UPON WHOM PROCESS MAY BE SERVED**

The following is submitted pursuant to 48.091(1) and 607.0501, Florida Statutes:

ESPERANZA SPECIAL MEMBER, INC., desiring to organize under the laws of the State of Florida, being at 712 US Highway One, Suite 400, North Palm Beach, Florida 33408, has named ROGER C. STANTON, located at the same address, as its initial Registered Agent to accept service of process within this State.

ACKNOWLEDGMENT:

Having been named to accept service of process for the above stated Corporation, at the initial registered office of the Corporation in this State, I hereby accept to act in this capacity and agree to comply with the provisions of said statute relative to keeping the registered office of the Corporation open from 10:00 a.m. to noon each day, except Saturdays, Sundays and legal holidays, and to post therein a sign designating the name of the Corporation and the name of its Registered Agent.

DATED this 20th day of December, 2006.



ROGER C. STANTON