

P13000054828

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

6 ~~10:00~~ SEP 20 2013

COVER LETTER

TO: Amendment Section
Division of Corporations

NAME OF CORPORATION: SWEETWATER APARTMENTS HOLDINGS, INC.

DOCUMENT NUMBER: P13000054828

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

Please return all correspondence concerning this matter to the following:

NICOLE BARILLARO

Name of Contact Person

BEACHWOLD RESIDENTIAL LLC

Firm/ Company

192 LEXINGTON AVE. - STE 901

Address

NEW YORK, NY 10016

City/ State and Zip Code

NBARILLARO@BEACHWOLD.COM

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

NICOLE BARILLARO

Name of Contact Person

at (646)

354-2114

Area Code & Daytime Telephone Number

Enclosed is a check for the following amount made payable to the Florida Department of State:

☐ \$35 Filing Fee

☒ \$43.75 Filing Fee &
Certificate of Status

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

☐ \$52.50 Filing Fee
Certificate of Status
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

SWEETWATER APARTMENTS HOLDINGS, INC.

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

P13000054828

(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:

A. If amending name, enter the new name of the corporation:

_____ The new name must be distinguishable and contain the word "corporation," "company," or "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.," or the designation "Corp.," "Inc.," or "Co.". A professional corporation name must contain the word "chartered," "professional association," or the abbreviation "P.A."

B. Enter new principal office address, if applicable:
(Principal office address MUST BE A STREET ADDRESS)

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TALLAHASSEE, FLORIDA

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C. Enter new mailing address, if applicable:
(Mailing address MAY BE A POST OFFICE BOX)

D. If amending the registered agent and/or registered office address in Florida, enter the name of the new registered agent and/or the new registered office address:

Name of New Registered Agent _____

(Florida street address)

New Registered Office Address: _____, Florida _____
(City) (Zip Code)

New Registered Agent's Signature, if changing Registered Agent:

I hereby accept the appointment as registered agent. I am familiar with and accept the obligations of the position.

Signature of New Registered Agent, if changing

If amending the Officers and/or Directors, enter the title and name of each officer/director being removed and title, name, and address of each Officer and/or Director being added:

(Attach additional sheets, if necessary)

Please note the officer/director title by the first letter of the office title:

P = President; V= Vice President; T= Treasurer; S= Secretary; D= Director; TR= Trustee; C = Chairman or Clerk; CEO = Chief Executive Officer; CFO = Chief Financial Officer. If an officer/director holds more than one title, list the first letter of each office held. President, Treasurer, Director would be PTD.

Changes should be noted in the following manner. Currently John Doe is listed as the PST and Mike Jones is listed as the V. There is a change, Mike Jones leaves the corporation, Sally Smith is named the V and S. These should be noted as John Doe, PT as a Change, Mike Jones, V as Remove, and Sally Smith, SV as an Add.

Example:

X Change PT John Doe

X Remove V Mike Jones

X Add SV Sally Smith

Type of Action (Check One)	Title	Name	Address
1) <input type="checkbox"/> Change	_____	_____	192 LEXINGTON AVE. - STE 901
<input type="checkbox"/> Add	_____	_____	_____
<input type="checkbox"/> Remove	_____	_____	_____
2) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add	_____	_____	_____
<input type="checkbox"/> Remove	_____	_____	_____
3) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add	_____	_____	_____
<input type="checkbox"/> Remove	_____	_____	_____
4) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add	_____	_____	_____
<input type="checkbox"/> Remove	_____	_____	_____
5) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add	_____	_____	_____
<input type="checkbox"/> Remove	_____	_____	_____
6) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add	_____	_____	_____
<input type="checkbox"/> Remove	_____	_____	_____

(Attach *additional sheets, if necessary*). (Be specific)

Add SPE Provisions contained in the attached document.

(if not applicable, indicate N/A)

The date of each amendment(s) adoption: September 9, 2013, if other than the date this document was signed.

Effective date if applicable: _____
(no more than 90 days after amendment file date)

Adoption of Amendment(s) (CHECK ONE)

- ☐ The amendment(s) was/were adopted 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):*

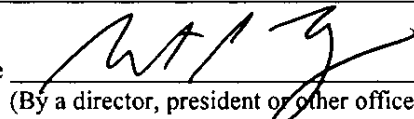
"The number of votes cast for the amendment(s) was/were sufficient for approval

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.

Dated September 9, 2013

Signature



(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)

Robert P. Rothenberg

(Typed or printed name of person signing)

Vice President & Director

(Title of person signing)

SPE Provisions attached to Articles of Amendment of the Articles of Incorporation of
Sweetwater Apartments Holdings, Inc.

Notwithstanding any other provision of these Articles of Incorporation, any other organizational documents or any provisions of law that empowers Sweetwater Apartments Holdings, Inc. (the "Corporation"), the following provisions shall be operative and controlling so long as the loan (the "Loan") by **GS Commercial Real Estate LP**, a Delaware limited partnership or its successors and/or assigns (collectively, the "Lender") to Sweetwater Apartments LLC (the "Company") is outstanding:

1. The sole purpose of the Corporation has been, is and will be to manage, own and hold the membership interest in the Company, whose sole purpose is to acquire, own, hold, maintain and operate the multifamily apartment complex in Dade City, Florida known as "Sweetwater Apartments" (the "Property"), together with such other activities permitted by the laws of the State of Florida, as may be necessary or advisable in connection with such limited purpose. The Corporation has not engaged and shall not engage in any business, and it has and shall have no purpose, unrelated to the foregoing purpose and has not owned, does not own and shall not acquire any real property or own assets other than those in furtherance of the limited purposes of the Corporation.

2. 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 and the Corporation and the Lender.

3. The Corporation shall not:

(a) make any loans to any shareholder, Affiliate, any equity holder or any Affiliate of any shareholder or equity holder;

(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 sale or disposition includes the Property or 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) cause or consent to the dissolution, winding-up or liquidation, in whole or in part, of the Company;

(e) merge, consolidate or acquire all or substantially all of the assets of an any other person or entity (whether or not an Affiliate);

(f) cause the Company to consolidate, combine or merge with or into any person or to convey or transfer or lease its Property and assets substantially as an entirety to any person;

(g) change the nature of the business of the Corporation, or cause the Company to engage in any business or activity other than as set forth in its Operating Agreement;

(h) amend the provisions of these Articles of Incorporation of the Corporation or approve an amendment to the SPE Provisions contained in Article XII, Sections 1 through 13 of the Operating Agreement of the Company; or

- (i) withdraw as the Managing Member of the Company.

So long as any obligations secured by the Loan remain outstanding and not paid in full, the Corporation shall have no authority to take, and shall not take, any action in items (a) through (i) above without (1) the prior written consent of the holder of the Security Instrument and, (2) after any Securitization (as defined in the Loan Agreement) and if requested by holder of the Security Instrument, confirmation from each of the Rating Agencies (as defined in the Loan Agreement) that such action will not result in the qualification, withdrawal or downgrade of any securities rating assigned in connection with the Loan.

4. The Corporation shall not, and no person or entity on behalf of the Corporation shall, either with respect to the Corporation or the Company, without the prior written affirmative vote of one hundred percent (100%) of the board of directors of the Corporation: (a) institute proceedings to be adjudicated bankrupt or insolvent; (b) consent to the institution of bankruptcy or insolvency proceedings against it or the Company; (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 Company or a substantial part of their respective property; (e) make any assignment for the benefit of creditors; (f) 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 (g) take any corporate action in furtherance of any such action.

5. The Corporation shall not incur any indebtedness or assume, guaranty or pay any indebtedness of any person, other than the Loan evidenced by a Promissory Note entered by Company and made payable to Lender, and a Loan Agreement entered by the Company and Lender (as amended, the "Loan Agreement") and secured by the lien on the Property evidenced by a Mortgage, Assignment of Rents and Leases, Collateral Assignment of Property Agreements, Security Agreement and Fixture Filing filed in the official public records of Pasco County, Florida for the benefit of Lender (the "Security Instrument") and indebtedness permitted therein and normal trade accounts payable in the ordinary course of business (subject to the limitations contained in the Loan Agreement).

6. The Corporation shall not cause the Company to incur any indebtedness or to assume or guaranty any indebtedness of any person, other than the Loan and indebtedness permitted by and subject to the terms and limitations contained in the Loan Agreement.

7. The Corporation shall at times observe the applicable legal requirements for the recognition of the Corporation as a legal entity separate from any equity holder or Affiliates of Corporation, including, without limitation, as follows:

- (a) The Corporation shall either (A) maintain its principal executive office and telephone and facsimile numbers separate from that of any Affiliate or any equity holder and shall conspicuously identify such office and numbers as its own, or (B) shall allocate by written agreement fairly and reasonably any rent, overhead and expenses for shared office space. Additionally, the Corporation shall use, and cause the Company to use, its own separate stationery, invoices and checks which reflects its separate 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 or any equity holder 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, if required to file tax returns.

(e) The Corporation shall cause the Company to timely prepare separate tax returns and financial statements for itself and not permit the assets of the Company to be listed as assets on the financial statements of any other entity, or if part of a consolidated group, then such that the Company will be shown as a separate member of such group

(f) 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 or any equity holder.

(g) The Corporation shall cause the Company to hold itself out to creditors and the public as a legal entity separate and distinct from any other entity.

(h) The Corporation shall observe all customary formalities regarding the corporate existence of the Corporation, including holding meetings and maintaining current and accurate entity record books separate from those of any Affiliate or any equity holder.

(i) The Corporation shall cause the Company to hold regular meetings, as appropriate, to conduct the business of the Company and to observe all other legal formalities.

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

(k) 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.

(l) 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 or equity holder of the Corporation, nor shall it make any loan, except as permitted in the Loan Documents.

(m) The Corporation shall remain solvent and pay all of its debts and liabilities from its assets as they become due, and cause the Company to remain solvent and pay all of its debts and liabilities from the Company's assets as they become due.

(n) 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 or 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 or any equity holder, and (iv) Corporation funds shall be used only for the business of the Corporation.

(o) The Corporation shall cause the Company maintain its assets in the Company's name, and in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or any equity holder.

(p) The Corporation shall not identify any of its stockholders, shareholders, officers, directors or any Affiliate or equity holder thereof as a division or part of the Corporation, and will not identify itself as a division or part of any other entity and will neither cause the Company to identify any of its members, managers or any Affiliate or equity holder thereof as a division or part of the Company, nor cause the Company to identify itself as a division or part of any other entity.

(q) 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.

(r) The Corporation shall cause the Company to pay the salaries of its own employees, if any, and maintain a sufficient number of employees in light of the contemplated business operations.

(s) The Corporation shall, and shall cause the Company to, at all times be adequately capitalized to engage in the transactions contemplated at its formation, provided that nothing herein contained shall be deemed and will not make any distribution or dividend if doing so would cause it not to be adequately capitalized.

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

(u) 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.

(v) 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 or any equity holder.

(w) The Corporation shall transact all business and cause the Company to transact all business with Affiliates and equity holders on an arm's-length basis and pursuant to enforceable agreements, the terms of which are intrinsically fair, commercially reasonable and are no less favorable than would be obtained in a comparable transaction with an unrelated third party.

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

(y) The Corporation shall cause the officers, directors, managers, members and other representatives of the Corporation to act at all times with respect to the Corporation and the Company, consistent and in furtherance of the foregoing and in the best interests of the Corporation and the Company while simultaneously considering the interests of its creditors.

For purposes of these Articles of Incorporation, Affiliate shall mean any person or entity, including, but not limited to, the Company, which directly or indirectly through one or more intermediaries (i) controls, is controlled by or is under common control with a specified person or entity, or (ii) at least ten percent (10%) of the ownership interests in which are owned by a specified person or entity and/or entities described in clause (i) above with respect thereto, or (iii) owns (individually or with other entities described in clause (i) above) at least ten percent (10%) of the ownership interests in a specified person or entity. For purposes of the definition of "Affiliate", 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.

8. 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 (or, if applicable, defeased as contemplated by the Loan Agreement).

9. Notwithstanding anything to the contrary contained in these Articles of Incorporation, any capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the Loan Agreement.