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Division of Corporations

FLORIDA RESEARCH AND FILING

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P97000102473

Florida Department of State
Division of Corporations
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Division of Corporations
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TALLAHASSEE, FLORIDA

**COR AMND/RESTATE/CORRECT OR O/D RESIGN
VICTORIA TOWERS, INC.**

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Amend.

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8-23-11

8/22/2011

COVER LETTER

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**TO: Amendment Section
Division of Corporations**

NAME OF CORPORATION: Victoria Towers, Inc.

DOCUMENT NUMBER: P97000102473

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

Please return all correspondence concerning this matter to the following:

Joy S. Goldman

Name of Contact Person

Meltzer, Purtil & Stelle LLC

Firm/ Company

300 South Wacker Drive, Suite 3500

Address

Chicago IL 60606

City/ State and Zip Code

rcc899@aol.com

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

For further information concerning this matter, please call:

Joy S. Goldman

Name of Contact Person

at (312)

461-4321

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

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Articles of Amendment
to
Articles of Incorporation
of

VICTORIA TOWERS, INC.(Name of Corporation as currently filed with the Florida Dept. of State)P97000102473(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)

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:

New Registered Office Address:

(Florida street address)

(City)

Florida

(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

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TALLAHASSEE, FLORIDA

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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)

<u>Title</u>	<u>Name</u>	<u>Address</u>	<u>Type of Action</u>
<u>PRES</u>	<u>Stacey, Ralph Jr.</u>	<u>899 NW 4th St</u> <u>Miami FL 33128</u>	<input type="checkbox"/> Add <input checked="" type="checkbox"/> Remove
<u>D</u>	<u>Gawne, Matthew</u>	<u>899 NW 4th St</u> <u>Miami FL 33128</u>	<input type="checkbox"/> Add <input checked="" type="checkbox"/> Remove
<u>D, PR</u>	<u>Stacey, Richard E</u>	<u>899 NW 4th St</u> <u>Miami FL 33128</u>	<input checked="" type="checkbox"/> Add <input type="checkbox"/> Remove

E. If amending or adding additional Articles, enter change(s) here:
(attach additional sheets, if necessary). (Be specific)

See Exhibit A attached hereto

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

N/A

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The date of each amendment(s) adoption: August 19, 2011
(date of adoption is required)

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 August 19, 2011

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)

Richard E. Stacey

(Typed or printed name of person signing)

President

(Title of person signing)

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EXHIBIT A
AMENDMENT TO THE ARTICLES OF INCORPORATION
OF
VICTORIA TOWERS, INC.

RESOLVED, that

ARTICLE II of the Articles of Incorporation shall be amended to provide in its entirety as follows:

ARTICLE II - Purposes

The purposes for which the Corporation is organized are as follows:

1. So long as that certain Credit and Security Agreement (the "Credit Agreement") by and among MidCap Financial, LLC, as Agent (the "Agent"), the lenders who are parties thereto (the "Lenders"), the Corporation and any additional borrower which may be added thereto (with the Corporation, the "Borrowers") remains in force and effect, and at any time when the Corporation has any Obligations (as hereinafter defined);

(a) The business and purposes of the Corporation are and will continue to be limited to the following:

(i) to enter into and perform its obligations under the Credit Agreement and the other Operative Documents (as hereinafter defined);

(ii) to acquire, own, hold, lease, maintain, develop and improve the Projects (as hereinafter defined);

(iii) to sell, transfer, service, convey, dispose of, pledge, assign, borrow money against, finance or otherwise deal with the Projects to the extent permitted under the Financing Documents (as hereinafter defined);

(iv) to refinance the Projects; and

(v) to engage in any lawful act or activity and to exercise any powers permitted to Florida corporations that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above mentioned purposes.

(b) The Corporation shall do (or cause to be done) all things necessary in order to preserve its existence to the fullest extent permitted by law. The Corporation shall do (or cause to be done) all of the following:

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(i) not own any asset or property other than a fee interest in the Projects and incidental personal property necessary for the ownership or operation thereof;

(ii) not enter into any contract or agreement with any Affiliate (as hereinafter defined) of the Corporation, any constituent party of the Corporation, any guarantor or indemnitor under any of the Financing Documents or any Affiliate of any such constituent party or guarantor or indemnitor, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with third parties other than any such party;

(iii) maintain its intention to remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets, to the extent of their assets, as the same shall become due;

(iv) do or cause to be done all things necessary to observe organizational formalities of the Corporation and preserve its existence, and not terminate or fail to comply with any of the provisions in this Section 1(b) of this ARTICLE II;

(v) maintain all of its books, records, financial statements and bank accounts separate from those of its Affiliates and any other person or entity; *provided, however*, that the Corporation's financial position, assets, results of operations and cash flows may be included in a consolidated financial statement of an Affiliate in accordance with Generally Accepted Accounting Principles so long as any such consolidated financial statement contains a note indicating that the Corporation and its Affiliates comprising the consolidated group are separate legal entities;

(vi) hold itself out to the public as a legal entity separate and distinct from each other entity (including any Affiliate, any guarantor or any constituent party of the Corporation), correct any known misunderstanding regarding its status as a separate entity, conduct business in its own name, and not identify itself or any of its Affiliates as a division or part of any other entity; *provided, however*, that the Corporation and the other Borrowers shall be permitted to, and shall at all times, hold themselves out to the public as entities that operate as a common enterprise;

(vii) to the extent of cash flow available from ownership of the Projects and other business of the Corporation, intend to 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;

(viii) not commingle its funds and other assets with those of any Affiliate or constituent party, any guarantor or any other person, except for funds

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deposited into any lockbox accounts or other cash management arrangements required under the Credit Agreement;

(ix) maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or constituent party, any guarantor or any other person or entity;

(x) not permit any Affiliate (other than an officer) or constituent party independent access to the Corporation's bank accounts;

(xi) pay the salaries of its own employees, if any;

(xii) compensate its consultants and agents, if any;

(xiii) maintain an arm's-length relationship with its Affiliates;

(xiv) allocate fairly and reasonably shared expenses, if any, including shared office space;

(xv) not pledge any of its assets for the benefit of any person or entity other than Agent;

(xvi) have no obligation to indemnify its equity owners or its officers or directors, except to the extent that payment of such obligation is fully subordinated to the payment of the Obligations; *provided, however*, the foregoing shall not apply where the indemnity is paid from third party funds, such as insurance proceeds;

(xvii) maintain records, books of account and bank accounts separate and apart from any other person or entity (other than any lockbox account or other cash management arrangement required hereunder); and file its own tax returns, if any, as may be required under applicable law, *provided, however*, that the Corporation may file its federal tax return on a consolidated basis; and maintain its books, records, resolutions and agreements as official records; and

(xviii) not make any loans or advances to any third party, and not acquire obligations or securities of its Affiliates, except, in each case, as permitted under the Financing Documents.

(c) So long as any Credit Exposure (as hereinafter defined) shall exist, the Corporation shall not do (or cause to be done) any of the following, except to the extent otherwise permitted under the Financing Documents (if at all):

(i) assume, guarantee, become obligated for, or hold itself out to be responsible for the debts or obligations of any other person or entity or the decisions or actions respecting the daily business or affairs of any other person;

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(ii) engage, directly or indirectly, in any business other than the actions required or permitted to be performed under these Articles of Incorporation, as they may be amended from time to time with the Agent's consent;

(iii) incur, create or assume any indebtedness other than as permitted under the Credit Agreement;

(iv) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any person or entity;

(v) form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other); or

(vi) to the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger or sale of all or substantially all of their assets.

(d) Certain terms used in this ARTICLE II and in ARTICLE XI are defined as follows:

"Affiliate" means (a) any person that directly or indirectly owns 5% or more of the voting stock of the Corporation or has the power to direct or cause the direction of the management or policies of the Corporation, (b) any entity which is controlled by or is under common control with the Corporation, and (c) the Corporation's officers and directors and the spouses, parents, descendants and siblings of such officers and directors.

"Credit Exposure" means any period of time during which any commitment by any lender under the Credit Agreement is outstanding or any Obligation remains unpaid or outstanding;

"Declaration" means the Declaration of Condominium of Victoria Center, a condominium.

"Financing Documents" means the Credit Agreement, all other documents which evidence or secure any obligation or liability under the Credit Agreement and all other documents and instruments related to the Obligations

"Obligations" means all obligations, liabilities and indebtedness (monetary (including post-petition interest, whether or not allowed) or otherwise) of the Corporation under the Credit Agreement or any other Financing Document, including any obligations liabilities and indebtedness arising from or in connection with any swap agreements entered into pursuant to the Credit Agreement.

"Operative Documents" means the Financing Documents, any operating leases and management agreements to which the Corporation is a party, any documents

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related to any other debt of the Corporation which is subordinated to the Obligations or any part thereof and the Declaration and any documents effecting any purchase or sale or other transaction that is closing contemporaneously with the closing of the financing under the Credit Agreement.

"Projects" means Victoria Nursing and Rehabilitation Center, a 264-bed skilled nursing facility located in Miami, Florida and any other facility and each and every portion thereof (including land, improvements and all other real and personal property (a) from which the Corporation or any Affiliate provides or furnishes goods or services, including, without limitation, any skilled nursing facility, assisted living facility, independent living facility or similar facility, and (b) owned by the Corporation or any Affiliate from which any person furnishes goods or services

2. At such time as the Credit Agreement is no longer in force and effect and the Corporation has no Obligations, the purpose of the Corporation shall be to engage in any lawful act or activity and to exercise any powers permitted to Florida corporations.

ARTICLE VI – Number of Directors; Distributions; Redemptions shall be amended by deleting the second sentence of the first paragraph of that Article and substituting in lieu thereof the following new second sentence of the first paragraph, providing in its entirety as follows:

"The number of directors shall be fixed in accordance with the bylaws."

ARTICLE XI – Indemnification of Directors and Officers shall be amended by adding the following new sentence immediately following the existing ARTICLE XI:

Notwithstanding the foregoing, so long as the Credit Agreement remains in force and effect, and at any time when the Corporation has any Obligations, the Corporation shall not have any obligation to indemnify, and shall not indemnify, any of its shareholders, officers or directors, except to the extent that payment of such obligation is fully subordinated to the payment of the Obligations; *provided, however*, the foregoing shall not apply where the indemnity is paid from third party funds, such as insurance proceeds.

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