

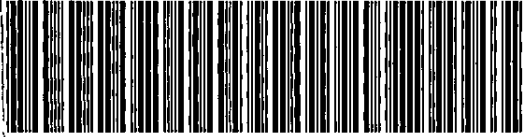
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(Document Number) \_\_\_\_\_

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2012 OCT 12 PM 12:46  
 SECRETARY OF STATE  
 TALLAHASSEE, FLORIDA

AC

OCT 12 2012  
T. LEWIS

**COVER LETTER**

**TO:** Amendment Section  
Division of Corporations

**SUBJECT:** James Brown Contracting, Inc.  
Name of Corporation

**DOCUMENT NUMBER:** F04000000535

The enclosed Amendment and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

Barbara A Leasure  
Name of Contact Person

Brown Integrated Logistics, Inc.  
Firm/Company

6908 Chapman Road  
Address

Lithonia, GA 30058  
City/State and Zip Code

bleasure@brownintegratedlogistics.com  
E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Barbara Leasure at ( 770 ) 482-6521  
Name of Contact Person Area Code & Daytime Telephone Number

Enclosed is a check for the following amount:

- \$35.00 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



FLORIDA DEPARTMENT OF STATE  
Division of Corporations

September 19, 2012

BARBARA A. LEASURE  
BROWN INTEGRATED LOGISTICS, INC.  
6908 CHAPMAN ROAD  
LITHONIA, GA 30058

SUBJECT: JAMES BROWN CONTRACTING, INC.  
Ref. Number: F04000000535

We have received your document for JAMES BROWN CONTRACTING, INC. and check(s) totaling \$43.75. However, the enclosed document has not been filed and is being returned to you for the following reason(s):

The name of your corporation is not available in Florida. An out-of-state corporation whose name is not available must adopt an alternate corporate name for use in Florida. The alternate corporate name must contain "Incorporated," "Company," "Corporation," "Inc.," "Co.," "Corp," "Inc," "Co," or "Corp." Please enter the alternate corporate name in the space provided in number five of the application.

Simply adding "of Florida" or "Florida" to the end of a name is not acceptable.

The document number of the name conflict is P95000062383 - BROWN TRUCKING CORPORATION.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 245-6050.

RECEIVED  
12 OCT 12 AM 10:31  
DIVISION OF CORPORATIONS  
TALLAHASSEE, FLORIDA  
Thelma Lewis  
Document Specialist Supervisor

Letter Number: 812A00023549

**PROFIT CORPORATION**  
**APPLICATION BY FOREIGN PROFIT CORPORATION TO FILE AMENDMENT TO**  
**APPLICATION FOR AUTHORIZATION TO TRANSACT BUSINESS IN FLORIDA**  
(Pursuant to s. 607.1504, F.S.)

**SECTION I**  
**(1-3 MUST BE COMPLETED)**

F0400000535

(Document number of corporation (if known))

**FILED**  
**2012 OCT 12 PM 12:46**  
**SECRETARY OF STATE**  
**TALLAHASSEE, FLORIDA**

1. James Brown Contracting, Inc.  
(Name of corporation as it appears on the records of the Department of State)

2. Georgia (Incorporated under laws of)      3. 01/26/2004 (Date authorized to do business in Florida)

**SECTION II**  
**(4-7 COMPLETE ONLY THE APPLICABLE CHANGES)**

4. If the amendment changes the name of the corporation, when was the change effected under the laws of its jurisdiction of incorporation? 6/30/2011

5. Brown Trucking Company  
(Name of corporation after the amendment, adding suffix "corporation," "company," or "incorporated," or appropriate abbreviation, if not contained in new name of the corporation)

James Brown Trucking Company  
(If new name is unavailable in Florida, enter alternate corporate name adopted for the purpose of transacting business in Florida)

6. If the amendment changes the period of duration, indicate new period of duration.

\_\_\_\_\_  
(New duration)

7. If the amendment changes the jurisdiction of incorporation, indicate new jurisdiction.

\_\_\_\_\_  
(New jurisdiction)

8. Attached is a certificate or document of similar import, evidencing the amendment, authenticated not more than 90 days prior to delivery of the application to the Department of State, by the Secretary of State or other official having custody of corporate records in the jurisdiction under the laws of which it is incorporated.

Barbara A. Leasure  
(Signature of a director, president or other officer - if in the hands of a receiver or other court appointed fiduciary, by that fiduciary)

Barbara A Leasure  
(Typed or printed name of person signing)

CFO and VP  
(Title of person signing)

# STATE OF GEORGIA

## Secretary of State

Corporations Division  
313 West Tower  
2 Martin Luther King, Jr. Drive  
Atlanta, Georgia 30334-1530

### Certified Copy

I, Brian P. Kemp, Secretary of the State of Georgia, do hereby certify under the seal of my office that the attached documents are true and correct copies of documents filed under the name of

### **BROWN TRUCKING COMPANY**

#### **Domestic Profit Corporation**

Said entity was formed in the jurisdiction set forth above and has filed in the Office of Secretary of State on the 7th day of October, 1976 its certificate of limited partnership, articles of incorporation, articles of association, articles of organization or application for certificate of authority to transact business in Georgia. This Certificate is issued pursuant to Title 14 of the Official Code of Georgia Annotated and is prima-facie evidence of the existence or nonexistence of the facts stated herein.



WITNESS my hand and official seal of the City of Atlanta and the State of Georgia on 6th day of August, 2012

A handwritten signature in black ink, appearing to read "B. P. Kemp".

Brian P. Kemp  
Secretary of State

**AMENDED AND RESTATED**  
**ARTICLES OF INCORPORATION**  
**OF**  
**BROWN TRUCKING COMPANY**

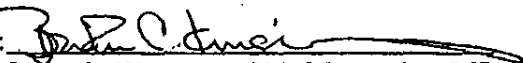
These Amended and Restated Articles of Incorporation of **Brown Trucking Company**, a domestic profit corporation formed under the laws of the State of Georgia (the "**Corporation**") were duly approved and adopted by the shareholders of the Company, upon the recommendation of the Board of Directors of the Company pursuant to the Georgia Business Corporation Code, as amended from time to time (the "**Code**"), as of the 20<sup>th</sup> day of September, 2011.

1. The name of the corporation is: **Brown Trucking Company**;
  
2. The Principal mailing address of the corporation is:  
  
**6908 Chapman Road  
Lithonia, GA 30058**
  
3. The Registered Agent of the corporation is:  
  
**Brian C. Kinsey  
6908 Chapman Road  
Lithonia, GA 30058  
County: DeKalb**
  
4. The sole shareholder of the corporation, by unanimous written consent dated September 20, 2011, approved the Corporation's cancellation of all issued and outstanding capital stock, except 100 shares of common stock;
  
5. The corporation is authorized to issue 100 shares of common stock;
  
6. This Amended and Restated Articles of Incorporation was adopted on September 20, 2011; and
  
7. This Amended and Restated Articles of Incorporation was adopted pursuant to Section 14-2-1003 of the Code by unanimous written consent of the sole shareholder of the Corporation



IN WITNESS WHEREOF, the undersigned, as Chief Executive Officer, hereby affirms under penalty of perjury that the facts herein are true, and has signed these Amended and Restated Articles of Incorporation on the date first written above.

BROWN TRUCKING COMPANY

By:   
Brian C. Kinsey, as Chief Executive Officer

[SIGNATURE PAGE TO BROWN TRUCKING COMPANY AMENDED AND RESTATED ARTICLES OF INCORPORATION]

2011 SEP 20 AM 11:46  
SECRETARY OF STATE  
CORPORATIONS DIVISION

**AMENDMENT  
TO THE  
ARTICLES OF INCORPORATION  
OF  
JAMES BROWN CONTRACTING, INC.**

THESE ARTICLES OF AMENDMENT, amending the Articles of Incorporation that formed **James Brown Contracting, Inc.** domestic profit corporation formed under the laws of the State of Georgia (the "**Company**") are made and executed by the undersigned President of the Company pursuant to the **Georgia Business Corporation Code**, as amended from time to time (the "**Code**").

1. The name of the corporation is: **James Brown Contracting, Inc.**;
2. The name of the corporation shall be amended to read as follows:  
  
**Brown Trucking Company;**
3. This Amendment to the Articles of Incorporation was adopted on June 22, 2011;
4. This Amendment to the Articles of Incorporation was adopted by unanimous written consent of the Directors of the Company pursuant to Section 14-2-821 of the Code, and without Shareholder approval in that Shareholder approval was not required pursuant to Section 14-2-1002 of the Code;
5. Publication of "Notice of Change of Corporate Name" will be published pursuant to O.C.G.A. 14-2-1006.1(b).

The undersigned, as President, hereby affirms under penalty of perjury that the facts herein are true, and has signed these Articles of Amendment on June 29, 2011.



By: Brian C. Kinsey, as President

SECRETARY OF STATE  
CORPORATIONS DIVISION  
2011 JUN 30 AM 11:37





**CERTIFICATE OF DESIGNATIONS**  
of  
**SERIES B PARTICIPATING CONVERTIBLE PREFERRED STOCK**  
of  
**JAMES BROWN CONTRACTING, INC..**

(Pursuant to Section 14-2-602 of the Georgia Corporation Code)

The undersigned, a duly authorized Officer of James Brown Contracting, Inc., a Georgia corporation (the "Corporation"), hereby certifies the following:

1. A series of Preferred Stock, no par value, consisting of 257,929 shares, are hereby designated "Series B Participating Convertible Preferred Stock", which may be referred to from time to time as the "Series B Preferred Stock."
2. The Series B Preferred Stock shall have such rights, preferences, privileges and restrictions as set forth on Attachment 1 (Statement of Resolutions Establishing the Designations, Preferences, Limitations and Relative Rights of the Series B Preferred Stock) hereto.
3. The foregoing was duly adopted by the Board of Directors of the Corporation on October 5, 2010 pursuant to the provisions of the Articles of Incorporation of the Corporation.

IN WITNESS WHEREOF, I have executed this Certificate of Designations and affirm that the statements made herein are true under the penalties of perjury, this 5th day of October, 2010.

JAMES BROWN CONTRACTING, INC.

By: Brian C. Kinsey  
Name: Brian C. Kinsey  
Title: President & CEO

SECRETARY OF STATE  
CORPORATIONS DIVISION

2010 OCT -5 PM 1:16

ATLANTA:4239813.596458

State of Georgia  
Expedite Amend/Restate 12 Page(s)



T1027810531

*passu* with holders of Common Stock as if the Series B Preferred Stock had been converted to Common Stock.

5. Liquidation Preferences.

(a) Upon any Liquidation Event (as defined below), each holder of the Series B Preferred Stock will be entitled to be paid, before any distribution or payment is made upon any Common Stock or any other class of capital stock, other than Preferred Stock that ranks senior or *pari passu* to the Series B Preferred Stock on liquidation, an amount in cash equal to 100% of the Purchase Price per each share of the Series B Preferred Stock held by such holder, plus accrued but unpaid dividends, whether or not declared, since the date of the initial issuance of the shares of Series B Preferred Stock up to and including the date full payment shall be tendered to the holders of the Series B Preferred Stock with respect to such liquidation, dissolution or winding up (collectively, the "Liquidation Amount").

(b) After payment of the Liquidation Amount shall have been made in full to the holders of the Series B Preferred Stock or funds necessary for such payment shall have been set aside by the Corporation in trust for the account of holders of the Series B Preferred Stock so as to be available for such payments, the remaining assets of the Corporation legally available for distribution to its shareholders shall be allocated among the holders of the Common Stock, the Series B Preferred Stock and the holders of any additional series of capital stock then entitled to participate in such distribution, collectively as one class. Such distribution shall be made ratably as if each share of the Series B Preferred Stock had been converted into the number of shares of Common Stock issuable upon the conversion of a share of Series B Preferred Stock immediately prior to any such liquidation, dissolution or winding up of the Corporation.

(c) If upon any Liquidation Event the remaining assets available for distribution to its shareholders shall be insufficient to pay the holders of shares of Series B Preferred Stock, and the holders of any class or series of stock ranking on liquidation *pari passu* with the Series B Preferred Stock, the full amount to which they shall be entitled, the holders of shares of Series B Preferred Stock and the holders of any class or series of stock ranking on liquidation *pari passu* with the Series B Preferred Stock shall share ratably in any distribution of the remaining assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

(d) Unless otherwise agreed to by the holders of at least a majority of the outstanding shares of Series B Preferred Stock, each of the following will be deemed a "Liquidation Event":

(i) any voluntary or involuntary liquidation, dissolution or winding up of the Corporation;

(ii) (A) the Corporation's direct or indirect sale, license, lease, transfer or other disposition, in any transaction or series of related transactions, of all or substantially all of its assets or (B) any transaction or series of related transactions (including, but not limited to, any consolidation, merger, reverse merger, reorganization, recapitalization, share exchange or sale or issuance of capital stock or other securities) which will result in the holders of the outstanding

Preferred Stock and the Board of Directors will rely on such appraisal in determining fair market value; and

(iii) insofar as it consists of both cash and property, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as provided for pursuant to the transaction in which such cash or property is received or otherwise as determined in good faith by a two-thirds vote of the Board of Directors of the Corporation.

(g) Written notice of such Liquidation Event, stating a payment date, the amount of the liquidation payments and the place where said liquidation payments shall be payable, shall be delivered not less than 15 days prior to any payment date stated therein and also the record date specified therein, to the holders of record of the Series B Preferred Stock.

(h) In case the Corporation shall at any time subdivide (by any stock split, stock dividend or otherwise) its outstanding shares of the Series B Preferred Stock into a greater number of shares, the Liquidation Amount for each share of the Series B Preferred Stock in effect immediately prior to such subdivision shall be proportionately reduced, and, conversely, in case the outstanding shares of the Series B Preferred Stock shall be combined into a smaller number of shares, the Liquidation Amount for each share of the Series B Preferred Stock in effect immediately prior to such combination shall be proportionately increased.

6. Voting Rights.

(a) Except as expressly set forth herein or as required by law, the Series B Preferred Stock holders shall be entitled to notice of any shareholders' meeting or written consent of the shareholders and shall have that number of votes on all matters coming before the shareholders equal to the aggregate number of shares of Common Stock into which such Series B Preferred Stock is then convertible, and provided further that where the Georgia Business Corporation Code (as in effect from time to time, the "Code") requires a class vote of preferred stock, the Series B Preferred Stock will vote with all other outstanding shares of Preferred Stock as a single class, and where the rights, privileges and preferences of the Series B Preferred Stock would be adversely affected as a series (as distinguished from being affected on a pro-rata basis with holders of all other Preferred Stock), a vote or written consent of the holders of two-thirds of the Series B Preferred Stock shall be required.

(b) At any time there is a default in whole or in part in payment of dividends on the Series B Preferred Stock, the holders of 5% or more of the outstanding shares of Series B Preferred Stock have a right to call a special meeting of shareholders for the purpose of electing the members of the board of directors, such right to be exercisable by delivering a request in writing for the calling of the special meeting to anyone of the following officers of the Corporation: the president or secretary, or to the chairman of the board or a vice-president if there be such. The officer receiving the request shall forthwith cause notice to be given to the shareholders entitled to vote at a meeting to be held at a time requested by the person or persons calling the meeting, such meeting to be held not less than 10 nor more than 60 days after the date of the meeting notice. If the notice is not given within 20 days after receipt of the request, the shareholders calling the meeting shall have the right to petition any court of competent jurisdiction for an order mandating the applicable officers to give notice of such meeting. Upon

(ii) amend its Articles of Incorporation or bylaws, or waive any provision thereof, if such amendment or waiver would amend or waive any of the rights, preferences, privileges of or limitations provided for herein for the benefit of any shares of Series B Preferred Stock, including but not limited to changing the relative seniority rights of the holders of Series B Preferred Stock as to the payment of dividends in relation to the holders of any other capital stock of the Corporation, reduce the Liquidation Amount (as defined herein) or change the relative seniority of the payment of proceeds from a Liquidation Event, or cancel or modify the conversion rights set forth herein; or

(iii) increase the share capital of the Corporation or authorize or issue any securities or rights to subscribe for or convert into or call for the issue of any additional securities not outstanding on the date hereof other than Common Stock and capital stock that by its terms ranks *pari passu* or junior to the Series B Preferred Stock.

(e) In addition to any other rights provided by law, until the date which is three (3) years after the last date on which cumulative dividends were paid in shares of Series B Preferred Stock in accordance with Section 3, if any, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders and former holders, as a class, of not less than a majority of the shares of Series B Preferred Stock on which cumulative dividends were paid in shares of Series B Preferred Stock during the preceding three (3) year period, declare or pay any dividends or other distributions upon any of its securities, or redeem or purchase or otherwise acquire any of the Corporation's securities; provided, however, such affirmative vote or written consent shall not be required to the extent that the Corporation acquires any of the Corporation's securities pursuant to and in compliance with Section 2 of the Shareholders' Agreement.

7. Conversion. The holders of the Series B Preferred Stock shall have conversion rights as follows (the "Conversion Rights"):

(a) Right to Convert. Each share of Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such Series B Preferred Stock at the office of the Corporation. Each share of Series B Preferred Stock shall be convertible into the number of shares of Common Stock which results from dividing (x) the aggregate Purchase Price for such shares of Series B Preferred Stock surrendered for conversion plus accrued but unpaid dividends on such share of Series B Preferred Stock, whether or not declared by (y) the Conversion Price (as defined below) then in effect at the time of conversion. The number of shares of Common Stock into which a single share of Series B Preferred Stock is convertible is hereinafter referred to as the "Conversion Rate." The Conversion Price per share for the Series B Preferred Stock initially in effect shall be the Purchase Price for such share. The initial Conversion Price of the Series B Preferred Stock shall be subject to adjustment as herein provided.

(b) Mechanics of Conversion. Before any holder of Series B Preferred Stock shall be entitled to convert the same into Common Stock as provided in Section 6(a), such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation and shall give written notice to the Corporation at such office that the holder elects to convert the same. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Series B Preferred Stock a certificate or certificates for the number of shares of

(e) Adjustment of Conversion Price Upon Issuance of Common Stock for Less than Consideration.

(i) Except as provided in Section 6(e)(ii), if and whenever the Corporation shall issue or sell, or is, in accordance with subsections (i) through (vi), deemed to have issued or sold, any Common Stock for a consideration per share less than the Conversion Price in effect for the Series B Preferred Stock immediately prior to the time of such issue or sale, then, forthwith upon such issuance or sale, the Conversion Price shall be reduced to the price equal to the per share price of the newly issued, or deemed issued, Common Stock. For purposes of this Section 6(e)(i), the following clauses (A) to (D) shall also be applicable:

(A) Issuance of Rights or Options. In case at any time the Corporation shall in any manner grant (whether directly or by assumption in a merger or otherwise) any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called "Options" and such convertible or exchangeable stock or securities being called "Convertible Securities") whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities (determined by dividing (A) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of all such Options, plus, in the case of Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (B) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options) shall be less than the Conversion Price in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities shall be deemed to have been issued for such price per share as of the date of granting of such Options or the issuance of such Convertible Securities and thereafter shall be deemed to be outstanding. Except as otherwise provided in clause (iii), no adjustment of the Conversion Price shall be made upon the actual issuance of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issuance of such Common Stock upon conversion or exchange of such Convertible Securities.

(B) Issuance of Convertible Securities. In case the Corporation shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell any Convertible Securities, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (A) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange thereof, by (B) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Conversion Price in effect immediately prior to the

allowed by the Corporation in connection therewith. In case any Options shall be issued in connection with the issuance and sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by a two-thirds vote of the Board of Directors of the Corporation.

(F) Record Date. In case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (B) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(ii) Certain Issues of Common Stock Excepted. Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of any Conversion Price in the case of (i) any issuance or sale of Common Stock (or securities convertible into Common Stock) at a price less than the Conversion Price if such issuance is approved by holders of 85% of the Series B Preferred Stock; (ii) any issuance of Common Stock on conversion of any Series B Preferred Stock; (iii) any issuance of Common Stock pursuant to the Corporation's incentive plans, provided the aggregate number of shares issued under such plans shall not exceed 12.5% of the Common Stock on a fully diluted basis; or (iv) issuance of shares of Common Stock to VVS Capital, LLC ("VVS") pursuant to that certain Consulting Services Agreement by and between VVS and the Corporation equal to 2.5% of the Common Stock on a fully diluted basis.

(f) Minimal Adjustments. No adjustment in a Conversion Price need be made if such adjustment would result in a change in a Conversion Price of less than \$0.01. Any adjustment of less than \$0.01 which is not made shall be carried forward and shall be made at the time of and together with any subsequent adjustment which, on a cumulative basis, amounts to an adjustment of \$0.01 or more in a Conversion Price.

(g) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of a Conversion Price pursuant to this Section 6, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of Series B Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon written request at any time of any holder of Series B Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price and Conversion Rate at the time in effect for all Preferred Stock held, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such Preferred Stock.

(h) Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any distribution (other than a cash distribution), the Corporation shall mail

# STATE OF GEORGIA

**Secretary of State**

**Corporations Division**

**315 West Tower**

**#2 Martin Luther King, Jr. Dr.**

**Atlanta, Georgia 30334-1530**

## CERTIFICATE OF RESTATED ARTICLES

I, **Karen C Handel**, the Secretary of State and the Corporations Commissioner of the State of Georgia, hereby certify under the seal of my office that

**JAMES BROWN CONTRACTING, INC.**  
a Domestic Profit Corporation

has amended and filed duly restated articles on 05/01/2008 in the Office of the Secretary of State and has paid the required fees as provided by Title 14 of the Official Code of Georgia Annotated. Attached hereto is a true and correct copy of said restated articles.

WITNESS my hand and official seal in the City of Atlanta  
and the State of Georgia on May 1, 2008



**Karen C Handel**  
Secretary of State

preferences and rights of the shares of each such series and the qualifications, limitations or restrictions thereof.

The authority of the Board of Directors with respect to each series of Preferred Stock shall include, but shall not be limited to, determination of the following:

(iii) The number of shares constituting that series and the distinctive designation of that series; and

(iv) The dividend rate on the shares of that series, whether dividends shall be cumulative, and, if so, from which date or dates, and the relative rights of priority of payment of dividends on shares of that series. Dividends on outstanding shares of Preferred Stock shall be paid or declared and set apart for payment before any dividends shall be paid or declared and set apart for payments on the Common Stock with respect to the same dividend period; and

(v) Whether that series shall have voting rights, in addition to the voting rights provided by law, and, if so, the terms of such voting rights; and

(vi) Whether that series shall have conversion privileges, and, if so, the terms and conditions of such conversion, including provision for adjustment of the conversion rate in such events as the Board of Directors shall determine; and

(vii) Whether or not shares of that series shall be redeemable, and, if so, the terms and conditions of such redemption, including the date or dates upon or after which they shall be redeemable, and the amount per share payable in case of redemption, which amount may vary under different conditions and at different redemption dates; and

(viii) Whether that series shall have a sinking fund for the redemption or purchase of shares of that series and, if so, the terms and amount of such sinking fund; and

(ix) The rights of the shares of that series in the event of voluntary or involuntary liquidation, dissolution or winding up of the Corporation, and the relative rights of priority, if any, of payment of shares of that series; and

(x) Any other relative rights, preferences and limitations of that series.

### III.

The street address and county of the registered office of the Corporation shall be 40 Technology Parkway South, Norcross, Gwinnett County, Georgia 30092. The registered agent of the Corporation at such address shall be Corporation Service Company.

### IV.

The directors of the Corporation shall have no liability to the Corporation or its shareholders for monetary damages for any action taken, or any failure to take any action, as a director, except liability for:



The Corporation shall indemnify the directors of the Corporation to the full extent that it is entitled to indemnify under the Code for those amounts authorized under the Code; provided, however, indemnification shall only be made upon compliance with the requirements of such statutory provisions and only in those circumstances in which indemnification is authorized under those provisions. The Corporation may purchase and maintain insurance on behalf of those persons for whom it is entitled to purchase and maintain insurance against any liability asserted against such persons and incurred by such persons in any capacity, or arising out of such persons' status as described in the Code, whether or not the Corporation would have the power to indemnify such persons against such liability under the Code. The Corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding by virtue of his or her service as a director, in advance of a final disposition of the proceeding if director submits to the Secretary of the Corporation a written request that complies with the requirements of such provisions set forth in the Code. The Secretary of the Corporation shall promptly upon receipt of such a request for indemnification, advise the Board of Directors in writing that such director has requested indemnification, and the determination of the entitlement of such director to indemnification shall be made within a reasonable time after the receipt of such written request by the Board of Directors. The indemnification and advancement of expenses provided by or granted pursuant to this Article shall, unless otherwise provided when authorized or ratified, and consistent with the requirements of the Code, continue as to a person who has ceased to be a director and shall inure to the benefit of the heirs, executors, and administrators of such a person.

[Signature on following page]

## EXHIBIT A

### STATEMENT OF RESOLUTIONS ESTABLISHING THE DESIGNATIONS, PREFERENCES, LIMITATIONS AND RELATIVE RIGHTS OF THE SERIES A CONVERTIBLE PREFERRED STOCK OF JAMES BROWN CONTRACTING, INC.

1. Designation. The series of Preferred Stock to which this Statement of Resolutions relates shall be designated "Series A Participating Convertible Preferred Stock" (the "Series A Preferred Stock") of James Brown Contracting, Inc. (the "Corporation"). Each share of Series A Preferred Stock shall have a purchase price equal to \$31.57895 (the "Purchase Price"). Each share of Series A Preferred Stock shall have the designations, preferences, limitations and relative, participating, optional or other special rights and privileges, and the qualifications, limitations and restrictions as follows:
2. Additional Shares. None of the shares of the Series A Preferred Stock has been issued. No additional shares of Series A Preferred Stock shall be authorized without the consent of the holders of a majority of the Series A Preferred Stock as provided in Section 5(c)(i).
3. Dividends. The holders of record of Series A Preferred Stock shall be entitled to receive as, when, and if declared by the Board of Directors of the Corporation dividends, in preference to the holders of common stock of the Corporation ("Common Stock") and any other capital stock of the Corporation other than preferred stock ("Preferred Stock") that ranks senior to the Series A Preferred Stock with respect to dividends, at an annual rate of twelve percent (12%) of the Purchase Price per share; provided that the Board of Directors shall not declare any dividends (on the Series A Preferred Stock or otherwise) prior to a Liquidation Event without the consent of any necessary lenders to the Corporation. Dividends shall begin to accrue and shall accumulate (to the extent not otherwise declared in compliance herewith and paid) from the initial date of issuance of such shares of Series A Preferred Stock. Dividends shall compound on an annual basis (to the extent not otherwise declared in compliance herewith and paid). Unless full cumulative dividends shall have been paid or set aside for payment on the Series A Preferred Stock, the Corporation shall not (i) declare or pay dividends on the Common Stock or on any other class of capital stock ranking *pari passu* or junior to the Series A Preferred Stock, or (ii) redeem or otherwise acquire any shares of Common Stock or any other series of capital stock ranking *pari passu* or junior to the Series A Preferred Stock other than (A) the exercise of any repurchase right otherwise existing with respect to any capital stock, stock options or restricted shares of Common Stock issued to any employee, officer or director under the Corporation's incentive plans and (B) that redemption transaction contemplated by that certain Stock Purchase and Redemption Agreement, dated April 17, 2008, by and between the Company, James Brown Holdings, L.P., a Delaware limited partnership and James W. Brown. In addition, subject to the immediately preceding sentence, with respect to any dividends on the Common Stock, when and as declared, the holders of Series A Preferred Stock shall be entitled to receive dividends *pari passu* with holders of Common Stock as if the Series A Preferred Stock had been converted to Common Stock.

transaction or (2) if the surviving or resulting entity is a wholly owned subsidiary of another entity immediately following such transaction, the parent entity of such surviving or resulting entity, provided that any such transaction which results in the holders of the outstanding voting equity securities of the Corporation immediately prior to such transaction not holding more than 50% of the outstanding voting equity securities (on an as-converted basis) of (i) the surviving or resulting entity immediately following such transaction or (ii) if the surviving or resulting entity is a wholly owned subsidiary of another entity immediately following such transaction, the parent entity of such surviving or resulting entity, shall be deemed to constitute a Liquidation Event if the result of such transaction would be to effect, directly or indirectly, any change that would otherwise require the consent of the holders of the then outstanding shares of Series A Preferred Stock; or

(iii) the commencement by the Corporation of a voluntary case under the United States bankruptcy laws or any applicable bankruptcy, insolvency or similar law of any other country, or the consent to the entry of an order for relief in an involuntary case under any such law or to the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Corporation or of any substantial part of its property, or the making of an assignment for the benefit of its creditors, or an admission in writing of its inability to pay its debts generally as they become due.

(e) The Corporation shall not have the power to effect any transaction constituting a Liquidation Event pursuant to Section 4(d)(ii)(2) above unless the agreement in respect of the transaction provides that the consideration payable to the shareholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 4(a) and 4(b) above.

(f) Any consideration received by the Corporation for purposes of this Section 4 shall be computed as follows:

(i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;

(ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by a two-thirds vote of the Board of Directors of the Corporation; provided, however, that if the holders of a majority of the Series A Preferred Stock then-outstanding dispute such determination within 10 business days after receipt of notice of such determination from the Corporation then (x) such determination shall be made by the Board of Directors in reliance on a recommendation of a representative selected by the holders of a majority of the Series A Preferred Stock then-outstanding and a representative selected by the Board of Directors of the Corporation, and (y) if no recommendation is made pursuant to clause (x) above within 3 business days, the Board of Directors shall cause an appraisal to be made by any nationally-recognized investment banking firm (other than that which provides, or has in the 2 years prior to such negotiation provided, services to the Corporation) selected by the Board of Directors and the holders of Series A Preferred Stock and the Board of Directors will rely on such appraisal in determining fair market value; and

Stock and the Series A Preferred Stock, voting together, shall constitute the directors of the Corporation until the next annual meeting, unless such term of office is terminated earlier in accordance with this Section 5(b).

(c) In addition to any other rights provided by law, so long as any Series A Preferred Stock is outstanding, the Corporation shall not and shall not permit any of its subsidiaries to, without first obtaining the affirmative vote or written consent of the holders of not less than a majority of such outstanding shares of Series A Preferred Stock:

(i) increase or decrease the total number of shares of Series A Preferred Stock;

(ii) undertake any Liquidation Event;

(iii) increase the number of members of the Corporation's Board of Directors;

(iv) effect any material change in the nature of the Corporation's business;

(v) enter into or amend any transaction with any of its executive officers, directors or affiliates;

(vi) instigate or settle any litigation proceedings with a value of more than \$500,000;

(vii) take any material steps towards the sale of substantially all of the assets or stock of the Corporation;

(viii) grant or award any registration rights which are on a parity with, or senior to, those granted to holders of Series A Preferred Stock; or

(ix) redeem or otherwise acquire any shares of Common Stock or any other series of capital stock ranking *pari passu* or junior to the Series A Preferred Stock other than the exercise of any repurchase right otherwise existing with respect to any capital stock, stock options or restricted shares of Common Stock issued to any employee, officer or director under the Corporation's incentive plans.

(d) In addition to any other rights provided by law, so long as any Series A Preferred Stock is outstanding, the Corporation shall not and shall not permit any of its subsidiaries to, without first obtaining the affirmative vote or written consent of the holders of not less 85% of such outstanding shares of Series A Preferred Stock:

(i) alter or change the rights, preference or privileges of the Series A Preferred Stock;

(ii) amend its Articles of Incorporation or bylaws, or waive any provision thereof, if such amendment or waiver would amend or waive any of the rights, preferences, privileges of or limitations provided for herein for the benefit of any shares of Series A Preferred Stock, including but not limited to changing the relative seniority rights of the holders of

Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock on such date.

(c) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Series A Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the Conversion Price.

(d) Adjustment of Conversion Price Generally. The Conversion Price of the Series A Preferred Stock shall be subject to adjustment from time to time as follows:

(i) If the number of shares of Common Stock outstanding at any time after the date hereof is increased by a share distribution payable in Common Stock or by a subdivision or split-up of Common Stock, then, on the date such payment is made or such change is effective, the Conversion Price shall be appropriately decreased so that the number of shares of Common Stock issuable on conversion of the Series A Preferred Stock shall be increased in proportion to such increase of outstanding shares.

(ii) If the number of shares of Common Stock outstanding at any time after the date hereof is decreased by a combination or reverse stock split of the outstanding Common Stock, then, on the effective date of such combination, the Conversion Price shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of the Series A Preferred Stock shall be decreased in proportion to such decrease in outstanding shares.

(iii) In case, at any time after the date hereof, of any capital reorganization, conversion or any reclassification of the shares of the Corporation (other than as a result of a share distribution or subdivision, split-up or combination of shares), or the consolidation or merger of the Corporation with or into another person (other than a consolidation or merger in which the Corporation is the continuing entity and which does not result in any change in the Common Stock), or the sale or other disposition of all or substantially all the properties and assets of the Corporation as an entirety to any other person, the Series A Preferred Stock shall, if such event is not deemed a Liquidation Event for purposes of Section 4(d), after such reorganization, reclassification, consolidation, merger, sale or other disposition, be convertible into the kind and number of shares or other securities or property of the Corporation or of the entity resulting from such consolidation or surviving such merger, or to which such properties and assets shall have been sold or otherwise disposed, to which such holder would have been entitled if immediately prior to such reorganization, reclassification, consolidation, merger, sale or other disposition he had converted his Series A Preferred Stock into Common Stock. The provisions of this Section 6.4(c) shall similarly apply to successive reorganizations, conversions, reclassifications, consolidations, mergers, sales or other dispositions.

(iv) All calculations under this Section 6 shall be made to the nearest cent or to the nearest one hundredth (1/100) of a share, as the case may be.

time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issue or sale of such Convertible Securities and thereafter shall be deemed to be outstanding, provided that (a) except as otherwise provided in clause (iii), no adjustment of the Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities and (b) if any such issuance or sale of such Convertible Securities is made upon exercise of any Options to purchase any such Convertible Securities for which adjustments of the Conversion Price have been or are to be made pursuant to other provisions of this Section 6(e), no further adjustment of the Conversion Price shall be made by reason of such issue or sale.

(C) Change in Option Price or Conversion Rate. Upon the happening of any of the following events, namely, if the purchase price provided for in any Option referred to in clause (i), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in Section 6(e)(i)(A) or (B), or the rate at which Convertible Securities referred to in Section 6(e)(i)(A) or (B) are convertible into or exchangeable for Common Stock shall change at any time (including, but not limited to, changes under or by reason of provisions designed to protect against dilution), the Conversion Price in effect at such time of such event shall forthwith be adjusted to the Conversion Price which would have been in effect at such time had the Options or Convertible Securities still outstanding been issued with such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold, but only if as a result of such adjustment the Conversion Price then in effect hereunder is thereby reduced; and on the termination of any Option referred to in Section 6(e)(i)(A) or any right to convert or exchange Convertible Securities referred to in Section 6(e)(i)(B), in either case, without any such exercise or conversion, the Conversion Price then in effect hereunder shall forthwith be adjusted to the Conversion Price which would have been in effect at the time of such termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such termination, never been issued.

(D) Stock Dividends. In case the Corporation shall declare a dividend or make any other distribution upon any stock of the Corporation payable in Common Stock, Options or Convertible Securities, any Common Stock, Options or Convertible Securities, as the case may be, issuable in payment of such dividend or distribution shall be deemed to have been issued or sold at a price per share equal to \$.00001, unless such dividend is paid to the holders of the Series A Preferred Stock pro rata in proportion to their ownership of the capital stock of the Corporation on an as converted basis.

(E) Consideration for Stock. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor, after deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the consideration received therefor shall be deemed to be the fair value of such consideration as determined in good faith by a two-thirds vote of the Board of Directors of the Corporation, after deduction of any expenses incurred or any underwriting commissions or concessions paid or

to each holder of Series A Preferred Stock, at least 10 days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such distribution.

(i) Reservation of Shares Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock solely for the purpose of effecting the conversion of the Series A Preferred Stock such number of shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series A Preferred Stock; and if at any time the number of authorized but unissued Common Stock shall not be sufficient to effect the conversion of all then outstanding Series A Preferred Stock, the Corporation will take such action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued Common Stock to such number of shares as shall be sufficient for such purpose.

7. Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing one or more shares of Series A Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation, the Corporation will (at its expense) execute and deliver in lieu of such certificate a new certificate representing the number of shares represented by such lost, stolen, destroyed or mutilated certificate.

8. Notices. Any notice required by the provisions hereof to be given to the holders of Series A Preferred Stock shall be deemed given five (5) days after being sent by certified or registered mail, postage and charges prepaid, return receipt requested, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

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**ARTICLES OF RESTATEMENT  
OF  
JAMES BROWN CONTRACTING, INC.**

Pursuant to O.C.G.A. § 14-2-1007 of the Georgia Business Corporation Code, JAMES BROWN CONTRACTING, INC., a Georgia corporation, hereby submits the following Articles of Restatement:

1.

The name of the corporation is:  
JAMES BROWN CONTRACTING, INC.

2.

The corporation shall have authority to issue not more than 1,000,000 shares of \$.10 par value stock.

3.

The current registered office of the corporation is at 6908 Chapman Road, Lithonia, DeKalb County, Georgia 30058. The current registered agent of the corporation at such address is JAMES BROWN.

4.

The mailing address of the current principal office of the corporation is:  
6908 Chapman Road  
Lithonia, GA 30058

5.

No director shall be liable to the corporation or its shareholders for monetary damages for any action taken, or any failure to take any action, as a director, except liability:

- a. For any appropriation, in violation of his or her duties, of any business opportunity of the corporation;
- b. For acts or omissions which involve intentional misconduct or a knowing violation of law;
- c. For the types of liabilities set forth in O.C.G.A. § 14-2-832; or
- d. For any transaction from which the director received an improper personal benefit,

provided, however, that the within article shall not eliminate or limit the liability of a director for any act or omission occurring prior to the date hereof.



DUPLICATE H608170



*J. Ben W. Fortson, Jr., Secretary of State of the  
State of Georgia, do hereby certify that*

"JAMES BROWN CONTRACTING, INC."

was on the 7th day of October 1976  
duly incorporated under the laws of the State of Georgia by the Superior Court of  
Fulton County for a period of Perpetual years  
from said date, in accordance with the certified copy hereto attached, and that the original  
articles of incorporation of said corporation has been duly filed in the office of the  
Secretary of State and the fees therefor paid, as provided by law.

In TESTIMONY WHEREOF, I have hereunto set my hand  
and affixed the seal of my office, at the Capitol, in the City of  
Atlanta, this 13th day of October in the year  
of our Lord One Thousand Nine Hundred and Seventy  
Six and of the Independence of the United States  
of America the Two Hundred and One.

*Ben W. Fortson, Jr.*  
SECRETARY OF STATE, EX OFFICIO CORPORATION  
COMMISSIONER OF THE STATE OF GEORGIA

7.

The initial Board of Directors shall consist of one member. His name and address is as follows:

James W. Brown  
Route 1, Box 237-0  
Social Circle, Georgia 30279

The number of Directors of the corporation may be increased with the appropriate action of the stockholders.

8.

The name and address of the incorporator is James W. Brown, Route 1, Box 237-0, Social Circle, Georgia 30279.

IN WITNESS WHEREOF, the undersigned executes these Articles of Incorporation.

BY:

  
Tom Benham, Attorney for  
Incorporator

Suite 210  
6600 Powers Ferry Road, N.W.  
Atlanta, Georgia 30339  
Tel. (404) 256-2438

# PUBLISHER'S AFFIDAVIT

STATE OF GEORGIA - County of Fulton

Before me the undersigned, a Notary Public, this day personally appeared Walter Hensley who being first duly sworn, deposes that he says that he is an Agent of the Daily Report Company, publisher of the Fulton County Daily Report, the official newspaper in which the Statutes and Resolutions in and for said County are published, and a newspaper of general circulation, with its principal place of business in said County, and that he has deposited with said newspaper the cost of publication for six months of a notice published to the Board of Commissioners of the County of Fulton, Georgia, of the incorporation of the Atlanta and Albany Railway Company, and that he has dissolved.

Subscribed and sworn to before me this  
day of Oct 1913

Notary Public, State of Georgia



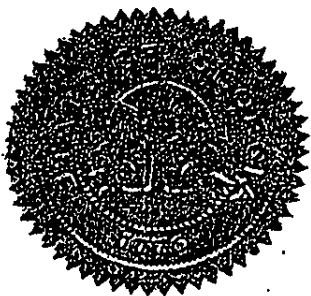
*J. Ben W. Fortson, Jr., Secretary of State of the State of Georgia, do hereby certify that*

based on a diligent search of the records on file in this office, I find that the name of the following proposed domestic corporation to wit

**JAMES BROWN CONTRACTING, INC.**

is not identical with or confusingly similar to the name of any other existing domestic or domesticated or foreign corporation registered in the records on file in this office or to the name of any other proposed domestic or domesticated, or foreign corporation as shown by a certificate of the Secretary of State heretofore issued and presently effective.

This certificate is in full force and effective for a period of 4 calendar months from date of issuance. After such period of time, this certificate is void.



In TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 4th day of October . . . in the year of our Lord One Thousand Nine Hundred and Seventy Six and of the Independence of the United States of America the Two Hundred and one.

*Ben W. Fortson Jr.*

Secretary of State, Ex-Officio Corporation  
Commissioner of the State of Georgia