

M66105

FILED  
2003 MAR 17 PM 12:27  
TALLAHASSEE, FLORIDA  
DEPARTMENT OF STATE

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

PICK-UP     WAIT     MAIL

(Business Entity Name)

(Document Number)

Certified Copies \_\_\_\_\_ Certificates of Status \_\_\_\_\_

Special Instructions to Filing Officer:

Office Use Only



800013681768

~~03/17/03 01045-021 \*\*175.00~~

03/17/03--01045--022 \*\*35.00

RECEIVED  
03 MAR 17 AM 11:33  
DEPT. OF STATE  
CORPORATIONS  
DIVISION  
TALLAHASSEE, FLORIDA

C. Coulliette MAR 17 2003

**CAPITAL CONNECTION, INC.**

417 E. Virginia Street, Suite 1 • Tallahassee, Florida 32301  
(850) 224-8870 • 1-800-342-8062 • Fax (850) 222-1222

Auto Care Centers of West  
Boca

- Art of Inc. File \_\_\_\_\_
- LTD Partnership File \_\_\_\_\_
- Foreign Corp. File \_\_\_\_\_
- L.C. File \_\_\_\_\_
- Fictitious Name File \_\_\_\_\_
- Trade/Service Mark \_\_\_\_\_
- Merger File \_\_\_\_\_
- Art. of Amend. File \_\_\_\_\_
- RA Resignation \_\_\_\_\_
- Dissolution / Withdrawal \_\_\_\_\_
- Annual Report / Reinstatement \_\_\_\_\_
- Cert. Copy \_\_\_\_\_
- Photo Copy \_\_\_\_\_
- Certificate of Good Standing \_\_\_\_\_
- Certificate of Status \_\_\_\_\_
- Certificate of Fictitious Name \_\_\_\_\_
- Corp Record Search \_\_\_\_\_
- Officer Search \_\_\_\_\_
- Fictitious Search \_\_\_\_\_
- Fictitious Owner Search \_\_\_\_\_
- Vehicle Search \_\_\_\_\_
- Driving Record \_\_\_\_\_
- UCC 1 or 3 File \_\_\_\_\_
- UCC 11 Search \_\_\_\_\_
- UCC 11 Retrieval \_\_\_\_\_
- Courier \_\_\_\_\_

Signature \_\_\_\_\_

Requested by: AW 3/17  
Name Date Time

Walk-In \_\_\_\_\_ Will Pick Up \_\_\_\_\_

# Articles of Amendment to Articles of Incorporation

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

2003 MAR 17 PM 12: 27

FILED

The undersigned, being the President of **Auto Care Centers of West Boca, Inc.**, a Florida corporation, hereby executes these Articles of Amendment to the Articles of Incorporation of **Auto Care Centers of West Boca, Inc.**, a Florida corporation, on behalf of the Corporation, and further states as follows:

1. Notwithstanding any other provision of these Articles of Incorporation, any other organizational documents or any provisions of law that empowers **Auto Care Centers of West Boca, Inc.** (the "Corporation"), the following provisions shall be operative and controlling so long as the loan (the "Loan") by **Westminster Capital Company, LC** or its successors and/or assigns (collectively, the "Lender") to the Corporation is outstanding:
  - a. The sole purpose of the Corporation is to acquire, own, hold, maintain and operate the property legally described on Exhibit "A" attached hereto and, by this reference, made part hereof (the "Property") together with such other activities as may be necessary or advisable in connection with the ownership of the Property. The Corporation shall not engage in any business, and it shall have no purpose, unrelated to the Property and shall not acquire any real property or own assets other than those related to the Property and/or otherwise in furtherance of the limited purposes of the Corporation.
  - b. The Corporation shall have no authority to perform any act in violation of any (a) applicable laws or regulations or (b) any agreement between the Corporation and the Lender.
  - c. The Corporation shall not:
    - i. make any loans to any shareholders or any Affiliates (as defined below);
    - ii. 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);

- iii. to the fullest extent permitted by law, dissolve, wind up or liquidate the Corporation;
  - iv. merge, consolidate or acquire all or substantially all of the assets of an Affiliate of same or other person or entity;
  - v. change the nature of the business of the Corporation; or
  - vi. except as permitted by the Lender in writing, amend, modify or otherwise change these Articles of Incorporation (or, after securitization of the Loan, only if the Corporation receives (i) confirmation from each of the applicable rating agencies that such amendment, modification or change would not result in the qualification, withdrawal or downgrade of any securities rating and (ii) permission of the Lender in writing).
- d. The Corporation shall not, and no person or entity on behalf of the Corporation shall, without the prior written affirmative vote of one hundred percent (100%) of the Board of Directors: (a) institute proceedings to be adjudicated bankrupt or insolvent; (b) consent to the institution of bankruptcy or insolvency proceedings against it; (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 a substantial part of its property; (e) make any assignment for the benefit of creditors; (f) admit in writing its inability to pay debts generally as they become due or declare or effect a moratorium on its debts; or (g) take any corporate action in furtherance of any such action.
- e. The Corporation shall have no indebtedness or incur any liability other than (a) unsecured debts and liabilities for trade payables and accrued expenses incurred in the ordinary course of its business of operating the Property, provided, however, that such unsecured indebtedness or liabilities (i) are in amounts that are normal and reasonable under the circumstances, but in no event, to exceed in the aggregate three percent (3%) of the outstanding principal amount of the Loan and (ii) are not evidenced by a note and are paid when due, but in no event for more than sixty (60) days from the date that such indebtedness or liabilities are incurred and (b) the Loan. No indebtedness other than the Loan shall be secured (senior, subordinated or pari passu) by the Property.
- f. The Corporation shall at times observe the applicable legal requirements for the recognition of the Corporation as a legal entity separate from any Affiliates of same, including, without limitation, as follows:
- i. The Corporation shall maintain its principal executive office and telephone and facsimile numbers separate from that of any Affiliate of same and shall conspicuously identify such office and numbers as its own or shall allocate by written agreement fairly and reasonably any rent, overhead and expenses

for shared office space. Additionally, the Corporation shall use its own separate stationery, invoices and checks which reflects its separate address, telephone number and facsimile number.

- ii. The Corporation shall maintain correct and complete financial statements, accounts, books and records and other entity documents separate from those of any Affiliate 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.
- iii. The Corporation shall maintain its own separate bank accounts, payroll and correct, complete and separate books of account.
- iv. The Corporation shall file or cause to be filed its own separate tax returns.
- v. The Corporation shall hold itself out to the public (including any of its Affiliates' creditors) under the Corporation's own name and as a separate and distinct corporate entity and not as a department, division or otherwise of any Affiliate of same.
- vi. The Corporation shall observe all customary formalities regarding the corporate existence of the Corporation, including holding meetings and maintaining current and accurate minute books separate from those of any Affiliate of same.
- vii. The Corporation shall hold title to its assets in its own name and act solely in its own name and through its own duly authorized officers and agents. No Affiliate of same shall be appointed or act as agent of the Corporation, other than, as applicable, a property manager with respect to the Property.
- viii. Investments shall be made in the name of the Corporation directly by the Corporation or on its behalf by brokers engaged and paid by the Corporation or its agents.
- ix. 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 of the Corporation, nor shall it make any loan, except as permitted in the loan agreement with the Lender.
- x. The Corporation is and will be solvent.
- xi. Assets of the Corporation shall be separately identified, maintained and segregated. The Corporation's assets shall at all times be held by or on behalf of the Corporation and if held on behalf of the Corporation by another entity,

shall at all times be kept identifiable (in accordance with customary usages) as assets owned by the Corporation. This restriction requires, among other things, that (i) Corporation funds shall be deposited or invested in the Corporation's name, (ii) Corporation funds shall not be commingled with the funds of any Affiliate of same or other person or entity, (iii) the Corporation shall maintain all accounts in its own name and with its own tax identification number, separate from those of any Affiliate of same or other person or entity, and (iv) Corporation funds shall be used for the business of the Corporation.


- xii. The Corporation shall maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate of same or other person or entity.
  - xiii. 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.
  - xiv. The Corporation shall at all times be adequately capitalized to engage in the transactions contemplated at its formation.
  - xv. The Corporation shall not do any act which would make it impossible to carry on the ordinary business of the Corporation.
  - xvi. 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.
  - xvii. None of the Corporation's funds shall be invested in securities issued by, nor shall the Corporation acquire the indebtedness or obligation of, any Affiliate of same.
  - xviii. The Corporation shall maintain an arm's length relationship with each of its Affiliates and enter into contracts or transact business with its Affiliates only on commercially reasonable terms that are no less favorable to the Corporation than is obtainable in the market from a person or entity that is not an Affiliate of same.
  - xix. The Corporation shall correct any misunderstanding that is known by the Corporation regarding its name or separate identity.
- g. For purposes of these Articles of Incorporation, Affiliate means any person or entity, which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a specified person or entity. For purposes hereof, the terms "control", "controlled", or "controlling" with respect to a specified person or entity shall include, without limitation, (i) the ownership, control or power

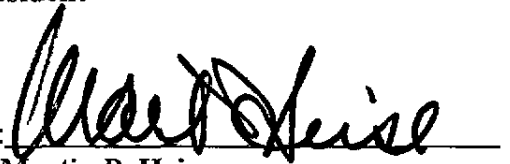
to vote ten percent (10%) or more of (x) the outstanding shares of any class of voting securities or (y) beneficial interests, of any such person or entity, as the case may be, directly or indirectly, or acting through one or more persons or entities, (ii) the control in any manner over the shareholder(s) or the election of more than one director or trustee (or persons exercising similar functions) of such person or entity, or (iii) the power to exercise, directly or indirectly, control over the management or policies of such person or entity.

- h. 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.
2. This Amendment was recommended by the Board of Directors to the Corporation's shareholders on the 5<sup>th</sup> day of March, 2003.
3. This Amendment was duly approved by the holders of a majority of the Corporation's common stock, which is the only group of the Corporation's shareholders entitled to vote on the amendment, and the number of votes in favor of the Amendments was sufficient for approval.

IN WITNESS WHEREOF, the Corporation has caused these Articles of Amendment to be executed on this 5<sup>th</sup> day of March, 2003.

Auto Care Centers of West Boca, Inc.

By:   
Gerald S. Berson  
President

Attest:   
Martin P. Heise  
Secretary

STATE OF FLORIDA )

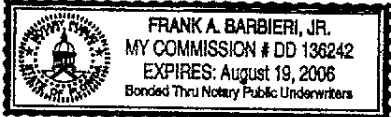
SS:

COUNTY OF PALM BEACH )

I HEREBY CERTIFY that on this day, before me, a Notary Public duly authorized in the State and County aforesaid, to take acknowledgments, personally appeared **Gerald S. Berson** and **Martin P. Heise** to me known to be the persons described as the President and Secretary, respectively, in and who executed the foregoing Articles of Amendment to the Articles of Incorporation and acknowledged before me that they subscribed to those Articles of Amendment.

WITNESS MY HAND AND OFFICIAL SEAL in the County and State named above on this 5<sup>th</sup> day of March, 2003.

*Frank A. Barbieri, Jr.*  
\_\_\_\_\_  
Notary Public





**EXHIBIT "A"**  
**TO**  
**ARTICLES OF AMENDMENT TO ARTICLES OF INCORPORATION**  
**OF**  
**AUTO CARE CENTERS OF WEST BOCA, INC.**

Legal Description of the "Property":

Lot 6, of SANDALFOOT PLAZA, according to the Plat thereof, as recorded in Plat Book 48, Page 186, of the Public Records of Palm Beach County, Florida.