

Division of Corporations

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AMEND/RESTATE/CORRECT OR O/D RESIGN**N B INVESTMENTS, INC.**

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Amend

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**Articles of Amendment
to
Articles of Incorporation
of
N B INVESTMENTS, INC.,
a Florida corporation
Document No. H22108**

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to the provisions of section 607.1006, Florida Statutes, this *Florida Profit Corporation* adopts the following amendment(s) to its original Articles of Incorporation (the "Articles of Incorporation"):

AMENDMENTS ADOPTED:

1. Article II. Nature of Business is hereby deleted in its entirety and replaced with the following:

ARTICLE II: PURPOSE.

Notwithstanding any other provisions contained in the Articles of Incorporation:

The Corporation's business and purpose shall consist solely of the following:

(a) Acquiring, owning, holding, selling, leasing, transferring, exchanging, operating and managing the real estate project known as J. C. Penney Homestore located in Pembroke Pines, Florida (the "Property"), entering into that certain \$4,200,000.00 loan with John Hancock Life Insurance Company (the "Lender"), and refinancing the Property in connection with a permitted repayment of the Loan, pursuant to and in accordance with these Articles of Incorporation; and

(b) to engage in such other lawful activities permitted to corporations by the laws of the State of Florida as are incidental, necessary or appropriate to the foregoing.

2. Article IX is hereby added to the Articles of Incorporation:

ARTICLE IX: RESTRICTED AND PROHIBITED ACTIVITIES

(a) At all times at which the directors of the Corporation shall take, or shall be required to take, any action in such capacity and until such time as all obligations secured by the Property pursuant to the terms of the first lien mortgage or deed of trust ("Mortgage") have been paid in full, the provisions of this Article IX shall apply to all actions of the Corporation

The term "Affiliate" shall have the definition assigned to it in *Appendix 1*.

(b) [Intentionally Deleted].

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(c) Notwithstanding any other provision of these Articles and any provision of law that otherwise so empowers the Corporation, and as long as any obligations secured by the Mortgage remain outstanding and not paid in full, the Corporation shall not, without the unanimous consent of the Board of Directors take any Bankruptcy Action (as defined in *Appendix I*).

(d) Notwithstanding any other provision of these Articles and any provision of law that otherwise so empowers the Corporation, and as long as any obligations secured by the Mortgage remain outstanding and not paid in full, the Corporation shall not do any of the following:

- (i) engage in any business or activity other than those set forth in Article 1 above;
- (ii) incur any indebtedness or assume or guaranty any indebtedness of any other entity, other than the Mortgage and indebtedness permitted therein and normal trade accounts payable in the ordinary course of business which are related to the purposes set forth in Article 1 above;
- (iii) dissolve or liquidate, in whole or in part;
- (iv) consolidate or merge with or into any other entity or convey or transfer or lease its property and assets substantially as an entirety to any entity;
- (v) enter into any transaction with an Affiliate unless such transaction is concluded on an arms length basis and upon commercially reasonable terms;

(e) Notwithstanding any other provision of these Articles and any provision of law that otherwise so empowers the Corporation, and as long as any obligations secured by the Mortgage remain outstanding and not paid in full, the Corporation shall not transfer any direct or indirect ownership interest in the Corporation such that the transferee, including without limitation its Family Members (as defined *Appendix I*) and Affiliates, as applicable, own, in the aggregate, more than a 49% interest in the Corporation. (or such other interest as specified in the Application or by a rating agency) unless such transfer is conditioned upon the delivery of a non-consolidation opinion acceptable to the holder of the Mortgage and to any applicable rating agency concerning the Corporation, the new transferee(s) and/or their respective owners (as applicable).

Article X is hereby added to the Articles of Incorporation:

ARTICLE X: SEPARATENESS/OPERATIONS MATTERS.

The Corporation shall in the conduct of its business and operations:

- (a) maintain books and records and bank accounts separate from those of any other person or entity;

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- (b) maintain its assets in such a manner that it is not costly or difficult to segregate, identify or ascertain such assets, and maintain its bank accounts separate from any other person or entity;
- (c) hold regular Board of Director and stockholder meetings, as appropriate to conduct the business of the Corporation, and observe all other corporate formalities;
- (d) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity;
- (e) prepare separate tax returns and financial statements;
- (f) allocate and charge fairly and reasonably any expenses associated with services provided by common employees, office space expenses, and other overhead expenses shared with Affiliates and maintain a sufficient number of employees in light of its contemplated business operations;
- (g) transact all business with Affiliates on an arm's-length basis and pursuant to commercially reasonable agreements;
- (h) conduct business in its own name, and use separate stationery, invoices and checks bearing its own name;
- (i) not commingle its assets or funds with those of any other person or entity;
- (j) not assume, guarantee, become obligated for, or pay the debts or obligations of any other person or entity;
- (k) pay its own liabilities and expenses only out of its own funds drawn on its own bank account;
- (l) not acquire obligations or securities of its Affiliates or shareholders;
- (m) not hold out its credit as available to satisfy the obligations of any other person or entity;
- (n) not pledge its assets for the benefit of any other entity or make any loans or advances to any person or entity;
- (o) not buy or hold evidence of indebtedness issued by any other person or entity (other than cash and investment grade securities);
- (p) correct any known misunderstanding regarding its separate identity;
- (q) not identify itself as a division of any other person or entity;
- (r) maintain adequate capital in light of its contemplated business operations; and

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- (3) maintain all required qualifications to do business in the state in which the Property is located.

The date of each amendment(s) adoption: February 15, 2008

Effective date if applicable: February 15, 2008

Adoption of Amendment(s) **(CHECK ONE)**

- ☒ The amendment(s) was/were approved 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 group(s). *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.

Signature


Nathan Butters, President

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Appendix 1
Definitions

Affiliate shall mean in the case of a corporate borrower, any person or entity other than the special purpose, bankruptcy remote corporation serving as the borrower (the "Corporation"), (i) which owns beneficially, directly or indirectly, any outstanding shares of the Corporation's stock, or (ii) which controls or is under common control with the Corporation. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

Affiliate shall mean in the case of a corporate general partner of a limited partnership borrower (the "Partnership"), any person or entity other than the special purpose, bankruptcy remote corporate general partner of the Partnership (the "Corporation"), (i) which owns beneficially, directly or indirectly, any outstanding shares of the Corporation's stock or any partnership interest in the Partnership, or (ii) which controls or is under common control with the Corporation or the Partnership. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

Affiliate shall mean in the case of a corporate member of a limited liability company borrower ("LLC"), any person or entity other than the special purpose, bankruptcy remote corporation serving as a member of the LLC (the "Corporation"), (i) which owns beneficially, directly or indirectly, any outstanding shares of the Corporation's stock or any membership interest in the LLC, or (ii) which controls or is under common control with the Corporation or the LLC. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise.

Bankruptcy Action means:

- A. Taking any action that might cause the Corporation to become insolvent;
- B.
 - (i) Commencing any case, proceeding or other action on behalf of the Corporation under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors;
 - (ii) Instituting proceedings to have the Corporation adjudicated as bankrupt or insolvent;
 - (iii) Consenting to the institution of bankruptcy or insolvency proceedings against the Corporation;
 - (iv) Filing a petition or consent to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief on behalf of the Corporation of its debts under any federal or state law relating to bankruptcy;

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- (v) Seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Corporation or a substantial portion of its properties;
- (vi) Making any assignment for the benefit of creditors of the corporation; or
- (vii) Taking any action in furtherance of any of the foregoing.

Family Member shall mean an individual's immediate family members (spouse, brother and sisters (whether by the whole or half blood), and ancestors or lineal descendants by birth or adoption) and/or any (i) trusts for the benefit of any immediate family member, (ii) partnership in which an immediate family member is a general partner, (iii) limited liability partnership in which an immediate family member is a general partner, (iv) limited liability company in which an immediate family member is a managing member, or (v) corporation in which an immediate family member is an officer, director, or controlling (as defined below) shareholder.