

L99512

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BASIC AMENDMENT

PBGS, INC.

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Amendment

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ROBERT SHAPIRO PA

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**ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
PBGS, INC.**

DOCUMENT NUMBER: L99512

Pursuant to the provisions of section 607.1008, Florida Statutes, this Florida corporation adopts the following articles of amendment to its Articles of Incorporation.

FIRST: See Exhibit "A" attached hereto and made a part hereof.

SECOND: If an amendment provides for an exchange, reclassification or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself, are as follows: n/a

THIRD: The date of adoption of the amendment was: March 28, 2003.

FOURTH: Adoption of Amendment (Check One):

☒ XXX The amendment(s) was(were) approved by the shareholders. The number of votes cast for the amendment(s) 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.

Signed this _____ day of March, 2003.

Signature: _____

ANDREW BROCK, President

**ARTICLES OF AMENDMENT TO
ARTICLES OF INCORPORATION
OF
PBGS, INC.**

1. Article III of the Articles of Incorporation is hereby restated in its entirety as follows:

The sole purpose of the Corporation is to acquire, hold, and own that certain General Partner Interest in and to P.B.G.S., Ltd., a Florida limited partnership ("Partnership"), and to engage in all business activities related or incidental thereto.

The Corporation hereby represents, warrants and covenants as of the date hereof and until such time as the mortgage ("Mortgage") in favor of Wachovia Bank, National Association, or its successors or assigns ("Lender") is satisfied or released, that the Corporation:

- (a) will not amend, modify or otherwise change its Articles of Incorporation, By-laws or other formation agreement or document, as applicable, or the Certificate of Limited Partnership or the Partnership Agreement of the Partnership in any material term or manner, or in a manner which adversely affects the Corporation's and Partnership's existence as a single purpose entity, without the prior written consent of Lender;
- (b) will not liquidate or dissolve (or suffer any liquidation or dissolution), or enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all the business or assets of, or any stock or other evidence of beneficial ownership of any entity;
- (c) has not and will not guarantee, pledge its assets for the benefit of, or otherwise become liable on or in connection with, any obligation of any other person or entity, except the Partnership;
- (d) does not own and will not own any asset other than: (i) its interest in the Partnership; and (ii) incidental personal property necessary for the operation of the Corporation;
- (e) is not engaged and will not engage, either directly or indirectly, in any business other than its interest in the Partnership and all business activities related or incidental thereto;
- (f) will not enter into any contract or agreement with any general partner of the Partnership or any principal, affiliate or member of the Partnership, as applicable, or any shareholder, officer or director of the Corporation, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than an affiliate;
- (g) has not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than: (i) the debt evidenced by the Mortgage; and (ii) affiliate advances or trade payables or accrued expenses incurred in the ordinary course of business of operating the Partnership and Property (as defined in the Partnership Agreement), and no other debt will be secured (senior, subordinate or *pari passu*) by the Property;
- (h) has not made and will not make any loans or advances to any third party (including any affiliate);
- (i) is and will be solvent and pay its debts from its assets as the same shall become due;

(j) has done or caused to be done and will do all things necessary to preserve its existence, and will observe all formalities applicable to it;

(k) will conduct and operate its business in its own name and as presently conducted and operated;

(l) will maintain financial statements, books and records and bank accounts separate from those of its affiliates;

(m) will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including, without limitation, any affiliate or shareholder, as applicable);

(n) will file its own tax returns;

(o) will 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;

(p) will establish and maintain an office through which its business will be conducted separate and apart from those of its affiliates and shall allocate fairly and reasonably any overhead and expense for shared office space;

(q) will not commingle the funds and other assets of the Corporation with those of the Partnership or any shareholder, officer, director or any other person;

(r) has and will 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 or any other person;

(s) does not and will not hold itself out to be responsible for the debts or obligations of any other person;

(t) will pay any of its liabilities out of its own funds, including salaries of its employees, not funds of any affiliate, subject to its right to receive such funds from the Partnership;

(u) will use stationery, invoices, and checks separate from its affiliates;

(v) will not voluntarily commence a case with respect to itself, or cause the Partnership to voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of all of the shareholders of the Corporation; and

Notwithstanding any provision hereof to the contrary: (a) any indemnification of the Corporation's shareholders shall be fully subordinate to any obligations respecting the Property (including, without limitation, the Mortgage) and such indemnification shall not constitute a claim against the Corporation in the event that cash flow in excess of amounts necessary to pay holders of such obligations is insufficient to pay such obligations; (b) the Corporation shall not terminate or dissolve solely as a consequence of the bankruptcy or insolvency of any of its shareholders; and (iii) subject to applicable law, dissolution of the Corporation shall not occur so long as the Corporation remains the general partner of the limited partnership which owns the Property subject to the Mortgage.

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The undersigned certify that it/they are: (i) the sole Shareholders of the Corporation; and (ii) the entire Board of Directors of the Corporation and that they have the right to adopt this amendment pursuant to the provisions of the Articles of Incorporation and Bylaws of the Corporation and the provisions of Section 607.1006, Florida Statutes.

Witnesses:

Renee Ann Winslow
Print Name: **RENEE ANN WINSLOW**

June Emberton
Print Name: **JUNE EMBERTON**

Robert Lee Shapiro
Print Name: **ROBERT LEE SHAPIRO**

June Emberton
Print Name: **JUNE EMBERTON**

Andrew Brock
Andrew Brock

Peter Brock
Peter Brock

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 28th day of March, 2003, by Andrew Brock who is personally known to me OR () who produced as identification.

Renee Ann Winslow
Notary Signature

Print Notary Name: **Renee Ann Winslow**
MY COMMISSION # **CC338047** EXPIRES **August 23, 2004**
BONDED THROUGH TROY FARM INSURANCE, INC.

NOTARY PUBLIC
State of Florida at Large
My Commission Expires:

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 27th day of March, 2003, by Peter Brock who is personally known to me OR () who produced as identification.

June Emberton
Notary Signature
Print Notary Name: **June Emberton**

NOTARY PUBLIC
State of Florida at Large

My Commission Expires:

