

PD00000079/80

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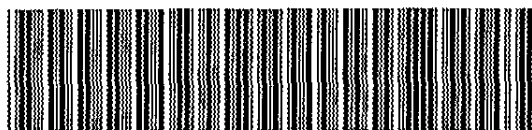
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03 JUL 23 PM 1:39
FBI - MEMPHIS

Amend
T. Lewis 7/29/03

TRANSMITTAL LETTER

TO: Amendment Section
Division of Corporations

SUBJECT: FORTY PROPERTIES, INC.

DOCUMENT NUMBER: P00000079180

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

Please return all correspondence concerning this matter to the following:

Robert A. Brandt, Esq.
1110 Brickell Avenue, PH-1
Miami, FL 33131

For further information concerning this matter, please call:

Robert A. Brandt, Esq. at (305 374-2202)

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

☐ \$52.50 Filing Fee, Certificate of Status
& Certified Copy

Mailing Address:

Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, Florida 32314

Street Address:

Amendment Section
Division of Corporations
409 E. Gaines Street
Tallahassee, Florida 32399

**ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
FORTY PROPERTIES, INC.**

P00000079180
(Document Number of Corporation)

FILED
03 JUL 23 PM 1:39
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to the provisions of section 607.1006, Florida Statutes, this Florida profit corporation adopts the following articles of amendment to its articles of incorporation:

FIRST: Amendment(s) adopted: *(indicate article number(s) being amended, added or deleted)*

ARTICLE II – NATURE OF BUSINESS.

Notwithstanding any provision hereof to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the corporation is to engage solely in the following activities:

- A. To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with certain real property, together with all improvements located thereon, in the City of Miami, State of Florida, commonly known as the Bird 74 Shopping Center (the "Property").
- B. To exercise all powers enumerated in the General Corporation Law of the State of Florida necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

Notwithstanding any provision hereof to the contrary, the following shall govern: The corporation shall only incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien in favor of Wachovia Bank, National Association, its successors or assigns (the "First Mortgage") exists on any portion of the Property, the corporation shall not incur, assume, or guaranty any other indebtedness. For so long as the First Mortgage exists on any portion of the Property, the corporation shall not dissolve or liquidate, or consolidate or merge with or into any other entity, or convey or transfer its properties and assets substantially as an entirety or transfer any of its shares of stock to any entity. For so long as the First Mortgage exists on any portion of the Property, the corporation will not 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 the board of directors. For so long as the First Mortgage exists on any portion of the Property, no material amendment to this certificate of incorporation or to the corporation's

by-laws may be made without first obtaining approval of the mortgagee holding the First Mortgage on any portion of the Property.”

Notwithstanding any provision hereof to the contrary, the following shall govern: Any indemnification of the corporation’s directors and officers shall be fully subordinated to any obligations respecting the Property (including, without limitation, the First 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.”

Notwithstanding any provision hereof to the contrary, the following shall govern: For so long as the First Mortgage exists on any portion of the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in this certificate of incorporation, the corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.
2. It shall maintain corporate records and books of account separate from those of its parent and any affiliate.
3. Its board of directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions.
4. It shall observe all corporate formalities.
5. It shall not commingle assets with those of its parent and any affiliate.
6. It shall conduct its own business in its own name.
7. It shall maintain financial statements separate from its parent and any affiliate.
8. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate.
9. It shall maintain an arm’s length relationship with its parent and any affiliate.

10. It shall not guarantee or become obligated for the debts of any other entity, including its parent or any affiliate, or hold out its credit as being available to satisfy the obligations of others.
11. It shall use stationery, invoices and checks separate from its parent and any affiliate.
12. It shall not pledge its assets for the benefit of any other entity, including its parent and any affiliate.
13. It shall hold itself out as an entity separate from its parent and any affiliate.

For purpose of this Article II, the following terms shall have the following meanings:

1. "affiliate" means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.
2. "parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the corporation.
3. "person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof."

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: None.

THIRD: The date of each amendment's adoption: July 14, 2003.

FOURTH: Adoption of Amendment(s) (CHECK ONE)

☒ 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 17th day of July, 2003.

Signature: _____
Yoram Izhak, President