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PAVESE HAVERFIELD

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**FLORIDA PROFIT CORPORATION OR P.A.**

**Appalachian #2, Inc.**

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**ARTICLES OF INCORPORATION**  
**For a Domestic Corporation**

*Pursuant to the laws of the State of Florida, to wit Chapter 607 of the 2001 Florida Statutes, the undersigned executes the following articles ("Articles") for purposes of forming a corporation ("the Corporation"):*

**ARTICLE I**

The name of the corporation is:

Appalachian #2, Inc.

**ARTICLE II**

The principal office shall be located at  
12734 Kenwood Square, Suite 35, in the City of Fort Myers, in the  
County of Lee, State of Florida.

The mailing address is

12734 Kenwood Square, Suite 35, Fort Myers, Florida 33907.

**ARTICLE III**

The Corporation shall adopt bylaws that conform to these Articles by unanimous consent of the initial shareholders ("Bylaws"). The Bylaws shall always be construed to conform to these Articles or, if any paragraph or section of the Bylaws cannot be reasonably construed to conform to these Articles, each offensive paragraph and/or section of the Bylaws shall be stricken as if it had never been adopted into the Bylaws so that the Bylaws conform to these Articles. The Bylaws shall otherwise be amendable and/or address matters not specifically precluded by these Articles. This Article controls all contradictory provisions of the other Articles, if any.

**ARTICLE IV**

Pursuant to Sections 607.0801(1) and 607.0732(1)(a) of the 2001 Florida Statutes, the Corporation will have no board of the directors, but shall, instead, act under the direction of the shareholders (each a "Shareholder"), always pursuant to these Articles and the Bylaws. The Shareholders shall, nonetheless, bear all of the fiduciary responsibilities of directors pursuant to State of Florida law, as well as the laws of any other

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jurisdiction, when acting in decisional, administrative, custodial and other capacities in the direction of the Corporation's powers that are normally associated with directors as set forth in Section 607.0801 (2) of the 2001 Florida Statutes.

## ARTICLE V

The total authorized shares:

1. Common Shares: Ten thousand (10,000) One and No/100 Dollars (\$1.00) par value Class A shares; no other classes are authorized.
2. Preferred Shares: None authorized.

The shares in the Corporation shall be of one class, each share maintaining proportional voting rights. Distributions shall be made in accordance with the Florida Business Corporation Act and as otherwise specified in these Articles and the Bylaws.

Except because of the provisions governing the issuance of new shares by unanimous vote and subject to the Shareholder shortfall provisions of these Articles and the Bylaws, each Shareholder shall have preemptive rights to purchase shares in cash pro rata based on the Shareholder's shares divided by all issued and outstanding shares pursuant to any offering by the Corporation.

The shares shall have no further rights or preferences other than those specifically mandated by the Florida Business Corporation Act or as otherwise specified in these Articles or the Bylaws.

The shares shall be limited in that all shares, including every portion thereof, shall be subject to the Corporation's right of first refusal ("Right of First Refusal"). This Right of First Refusal provides that all shares must be offered to the Corporation before sale or other transfer to any other person or entity, whether then a Shareholder or not, under the exact terms of the proposed sale or transfer, so long as the proposed sale or transfer is at Fair Market Value, as defined infra. Where the proposed sale or transfer of the shares is not at Fair Market Value, as defined infra, the Corporation, at Corporation's option, may substitute the price terms with Fair Market Value, as defined infra, or, if Fair Market Value, as defined infra, is not readily available, then book value calculated in accordance with generally accepted accounting principles. "Fair Market Value" means

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the price a particular property item will bring when offered for sale by a willing seller to a willing buyer in an arm's length transaction, neither being obliged to buy or sell.

The shares are further limited in that all Shareholders must be natural persons and citizens of the United States of America, and must consent to an election to be treated as a small business corporation within the meaning of Subchapter S of the Internal Revenue Code of 1986, as amended, ("IRC") by executing all documents necessary to effect the IRC Subchapter S election.

If adopted by the Shareholders, the shares may be further limited by encumbrances arising from the shareholder shortfall provisions of the Bylaws.

The shares shall have no other limitations other than those specifically mandated by the Florida Business Corporation Act or as specified in these Articles or the Bylaws.

#### ARTICLE VI

The initial registered agent is  
Jeffrey R. Garvin

Service of process may be made on the registered agent at  
2532 First Street, in the City of Fort Myers, County of Lee, State of  
Florida, with the postal zip code being 33901.

#### ARTICLE VII

The incorporator is  
Jeffrey R. Garvin

The address of the incorporator is  
2532 First Street, in the City of Fort Myers, in the County of Lee, State  
of Florida, with the postal zip code being 33901.

#### ARTICLE VIII

The Corporation may engage in any activity permitted by the Florida Business Corporation Act, as well as the other laws of the State of Florida, subject always to limitations of all other jurisdictions in which the Corporation acts.

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**ARTICLE IX**

In accordance with the dividend distribution rules of the Bylaws, the Corporation shall distribute to the Shareholders, prior to the fifteenth (15<sup>th</sup>) day of the third (3<sup>rd</sup>) month following the close of the Corporation's taxable year, or as soon thereafter as determined in accordance with the IRC, ("Tax Distribution Date") the lesser of (i) the Net Cash Flow, as defined infra, if any; and (ii) the collective distributive share, as defined by and calculated in accordance with the IRC, of all the Shareholders multiplied by the highest income tax rate set forth in IRC 1 ("Tax Distribution"). The Shareholders may forego or reduce the Tax Distribution for any particular Tax Distribution Date upon the unanimous vote, or unanimous, written, affirmative consent, of all of the Shareholders within thirty (30) days of the particular Tax Distribution Date for which the Shareholders consider foregoing or reducing a Tax Distribution; but, the Tax Distribution requirements of this Article shall never be waived, estopped or otherwise prevented by any preceding election by the Shareholders to forego or reduce a Tax Distribution. "Net Cash Flow" means the lesser of (i) the net change of the Corporation's cash balances during the prior taxable year calculated in accordance with generally accepted accounting principles; and (ii) the Corporation's cash balances at the end of the year, less reasonable reserves for working capital and projected cash requirements, including projected expenses and contingent liabilities, but not including capital investments and reinvestments that are not necessary to the Corporation as a going concern, all calculated in accordance with generally accepted accounting principles as limited by the IRC.

**ARTICLE X**

If shares are certificated, all stock certificates shall clearly bear legends indicating that the shares are issued subject to restrictions on transferability, in reliance upon the existence of exemptions from federal and state securities laws and with other rights, limitations, preferences and elections as expressed in these Articles.

**ARTICLE XI**

Additional Shareholders may be admitted to the Corporation upon the unanimous vote of all of the Shareholders of the Corporation.

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**ARTICLE XII**

Except as a result of business operations, these Articles and the Bylaws shall always be construed such that the Corporation will qualify for and continue to satisfy the requirements of IRC Subchapter S, including Department of the Treasury, Internal Revenue Service regulations, rulings, procedures and other pronouncements thereunder. If any section, paragraph, sentence or term of these Articles and/or the Bylaws cannot be reasonably construed to conform to IRC Subchapter S, each offensive section, paragraph, sentence and/or term of these Articles and/or the Bylaws shall be stricken as if it had never been adopted into these Articles and/or the Bylaws so that these Articles and/or the Bylaws conform to IRC Subchapter S.

**ARTICLE XIII**

The Articles may only be amended, superceded or repealed upon the unanimous vote, or unanimous, written, affirmative consent, of all of the Shareholders.

**ACKNOWLEDGMENT**

I, the incorporator of the Corporation, and without personally assuming or ratifying any prior contracts or promises made on behalf of the Corporation by any person or entity prior to the Corporation's formation, if any, execute these Articles this 14<sup>th</sup> day of October 2002.

  
\_\_\_\_\_  
Jeffrey R. Garvin

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ACCEPTANCE OF APPOINTMENT AS REGISTERED AGENT OF  
Appalachian #2, Inc.

I hereby accept the appointment as registered agent as designated in the attached Articles. I am familiar with and accept the obligations mandated by Chapter 607 of the 2001 Florida Statutes that are associated with the appointment.

  
Jeffrey R. GarvinFILED  
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County of Lee        )

I hereby certify that before me, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared Charles PT Phoenix, Esq., known to me to be the person who executed this Acceptance of Appointment as Registered Agent.

Witness my hand and official seal this 14<sup>th</sup> day of October 2002.  
Notary Public SignatureJennifer W. Mars  
Notary Public Printed NameMy Commission  
Expires:

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