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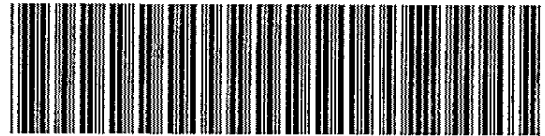
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## **THE WEISSER REALTY GROUP, INC.**

MICHAEL H. WEISSER, President  
KIM RIEDY, Comptroller  
DARIA WEISSER, Chairman  
JUSTIN P. WEISSER, Sr. Vice President

801 N.E. 167<sup>th</sup> Street, 2<sup>nd</sup> Floor  
North Miami Beach, FL 33162  
Phone: (305) 690-9110  
Fax: (305) 690-9550

November 23, 2004

Florida Department of State  
Division of Corporations  
409 E. Gaines Street  
Tallahassee, FL 32399

RE: CP Hazard Management Company, Inc.

Gentlemen:

Enclosed herein please find original and one copy of Affidavit and Certificate of Incorporation for the above named corporation together with our check in the amount of \$78.75 representing the filing fee and one certified copy.

Please file same and return certified copy to the undersigned.

Very truly yours,

A large, stylized handwritten signature in black ink, consisting of a large loop and a trailing flourish.

MICHAEL H. WEISSER

MHW:kr  
Enclosures

VIA FEDERAL EXPRESS

AFFIDAVIT AND CERTIFICATE OF INCORPORATION

OF

CP HAZARD MANAGEMENT COMPANY, INC.

FILED  
04 NOV 24 AM 9 35  
TALLAHASSEE  
SECRETARY OF STATE

THIS IS TO CERTIFY that we, the undersigned, hereby associate ourselves into a corporation pursuant to the provisions of the laws of the State of Florida providing the formation of corporations for profit, for the purposes and with the powers herein mentioned, and to that end we do by this Certificate set forth:

I.

The name of the corporation is CP HAZARD MANAGEMENT COMPANY, INC.

II.

The general nature of the business or businesses to be transactions shall be:

(a) To acquire a general partnership interest in and act as the general partner of Hazard Wal-Mart Super Center, Ltd. (the "Partnership"), which is engaged solely in the ownership, operation and management of a real estate project known as Hazard/Wal-Mart Shopping Center located in Hazard, Kentucky (the "Property"), pursuant to and in accordance with these Articles of Incorporation and the Hazard Wal-Mart Super Center, Ltd. Limited Partnership Agreement; 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.

### III. INDEPENDENT DIRECTOR

(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 loan documents and Mortgage (the "Mortgage") to be executed by the Partnership in favor of PNC Bank, National Association to secure a loan (the "Loan") in the amount of \$22,822,000.00 have been paid in full, there shall be at least one Independent Director. "Independent Director" shall mean a person who is not at the time of initial appointment, or at any time while serving as a director or manager, as applicable, and has not been at any time during the preceding five (5) years: (a) a stockholder, director (with the exception of serving as the Independent Director), officer, employee, partner, member, manager, attorney or counsel, consultant, agent or advisor of the Corporation or the Partnership, or any affiliate of either of them; (b) a customer, creditor, contractor, supplier or other person who derives any of its purchases or revenues from its activities with the Corporation, the Partnership, or any affiliate of either of them; (c) a person or entity controlling or under common control with any person or entity listed in clauses (a) or (b) or with any of such person or entities' affiliates; or (d) a member of the immediate family of any person or entity listed in clauses (a) or (b) or (c) or with any such person or entities' affiliates. As used in this definition, the term "control" means with possession, directly

or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract, or otherwise. "Affiliate" shall mean, as to any person or entity, any other person or entity that, directly or indirectly, is in control of, is controlled by or is under common control with such person or entity or is a director or officer of such person or of an affiliate of such person or entity.

(b) With the consent of the initial stockholder of the Corporation, which consent the initial stockholder believes to be in the best interest of the initial stockholder and the Corporation, no Independent Director shall, with regard to any action to be taken under or in connection with this ARTICLE, owe a fiduciary duty or other obligation to the initial stockholder nor to any successor stockholders (except as may specifically be required by the statutory law of any applicable jurisdiction), and every stockholder, including each successor stockholder, shall consent to the foregoing by virtue of such stockholder's purchase of shares of capital stock of the Corporation, no further act or deed of any stockholder being required to evidence such consent. Instead, such director's fiduciary duty and other obligations with regard to such action under or in connection with this ARTICLE shall be owed to the Corporation (including its creditors). In addition, no Independent Director may be removed unless his or her successor has been elected.

(c) Notwithstanding any other provision of these Articles and

any provision of law that otherwise so empowers the Corporation, the Corporation shall not, without the unanimous consent of the Board of Directors, including the Independent Director, do any of the following:

(i) engage in any business or activity other than those set forth in Article II or cause or allow the Partnership to engage in any business or activity other than as set forth in its Limited Partnership Agreement.

(ii) incur any indebtedness or assume or guaranty any indebtedness of any other entity, other than indebtedness in connection with the acquisition of the Property and normal trade accounts payable in the ordinary course of business.

(iii) cause or permit the Partnership to grant consensual liens on its property, other than the Mortgage, or cause the Partnership to incur any indebtedness, or to assume or guarantee any indebtedness of any other entity other than the Loan, and liabilities incurred in the ordinary course of business relating to the ownership and operation of the Property and the routine administration of the Partnership, in amounts not to exceed one (1%) percent of the loan in the aggregate, which liabilities are not more than sixty (60) days past the date incurred, are not evidenced by a note, and are paid when due, and which amounts are normal and reasonable under the circumstances.

(iv) dissolve or liquidate, in whole or in part.

(v) cause or consent to the dissolution or liquidation, in whole or in part, of the Partnership.

(vi) 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.

(vii) cause the Partnership to consolidate or merge with or into any other entity or to convey or transfer or lease its Property and assets substantially as an entirety to any entity.

(viii) with respect to the Corporation or the Partnership, institute proceedings to be adjudicated bankrupt or insolvent, or consent to the institution or bankruptcy or insolvency proceedings against it, or file a petition seeking or consenting to reorganization or relief under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Corporation or the Partnership or a substantial part of property of the Corporation or the Partnership, or make any assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or take corporate action in furtherance of any such action;

(ix) amend the Articles of Incorporation or the Bylaws of the Corporation or approve an amendment to the Limited Partnership Agreement governing the Partnership; or

(x) withdraw as general partner of the Partnership.

In addition to the foregoing, the Corporation shall not, without the written consent of the holder of the Mortgage so long as it is

outstanding, take any action set forth in items (i) through (vii) or items (ix) or (x).

#### ARTICLE IV - SEPARATENESS PROVISIONS

The Corporation shall:

(a) maintain books and records separate from any other person or entity;

(b) maintain its accounts separate from those of any other person or entity;

(c) not commingle its assets or funds with those of any other person or entity;

(d) conduct its own business in its own name;

(e) maintain separate financial statements from any other person or entity;

(f) pay its own liabilities out of its own funds;

(g) hold regular shareholder and director meetings as appropriate, to conduct the business of the Corporation, and do all things necessary to preserve its existence and observe all corporate formalities and other formalities required by these Articles and the Bylaws of the Corporation;

(h) pay the salaries of its own employees and maintain a sufficient number of employees in light of its contemplated business operations;

(i) not guarantee or become obligated for, or pay, the debts of any other entity or hold out credit as being available to satisfy



the obligations of others;

(j) not acquire obligations or securities of any of its members or any affiliate;

(k) allocate fairly and reasonably any overhead for shared office space;

(l) use separate stationery, invoices and checks from any other person or entity;

(m) not pledge its assets for the benefit of any other entity or make any loans or advances to any other entity;

(n) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity;

(o) correct any known misunderstanding regarding its separate identity;

(p) maintain adequate capital in light of its contemplated business operations;

(q) maintain its assets in such a manner that it is not costly or difficult to segregate, identify or ascertain such assets;

(r) be solvent and pay its debts from its assets as the same shall become due;

(s) not acquire by purchase or otherwise all or substantially all of the business or assets of, or any stock or beneficial ownership of, any entity;

(t) file its own tax returns;

(u) not enter into any contract or agreement with any general

partner, principal, member, manager or affiliate of the Partnership, or any affiliate of any such general partner, principal, manager or member, 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;

(v) will not have any obligation to, and will not indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Loan and will be paid to the extent that funds are available after all loan payments that are due have been made;

(w) cause the Partnership to comply with its Limited Partnership Agreement;

(x) conduct its business and cause the Partnership to conduct its business and operations in accordance with all of the assumptions made in the non-consolidation opinion issued by Borrower's counsel in favor of Lender in connection with the loan secured by the Mortgage.

#### V.

The maximum number and kind of shares that the corporation is authorized to have outstanding is:

(a) 500 Common at \$1.00 par value.

The Corporation will commence business with 100 shares.

Without action by the stockholders, the shares of stock without par value may be issued by the Corporation from time to time for such consideration as may be fixed from time to time by the Board of

Directors thereof, and any and all such shares, so issued, the full consideration of which has been paid or delivered, shall be deemed full paid stock, and not liable to any further call or assessment thereon, and the holder of such shares shall not be liable for any further payment thereon.

VI.

The amount of capital with which the Corporation will begin business is not less than Five Hundred (\$500.00) Dollars, which said amount has been paid in.

VII.

The Corporation shall have perpetual existence.

VIII.

The registered office and principal place of business of the Corporation is to be located at 801 N.E. 167<sup>th</sup> Street Floor, North Miami Beach, Dade County, Florida, and its Registered Agent is MICHAEL H. WEISSER, located at that address.

IX.

The business of the Corporation shall be managed and controlled by a Board of Directors consisting of not less than one nor more than eight members.

X.

The name, post office address of the first Board of Directors and officers who, subject to the provisions of this Certificate of Incorporation, By-Laws and the Act of the Legislature of the State of

Florida, whereunder the Corporation is organized, shall hold office for the first year of the Corporation's existence or until their successors are elected and have qualified, are as follows:

<u>NAME</u>	<u>POST OFFICE ADDRESS</u>	<u>OFFICE</u>
MICHAEL H. WEISSER	801 N.E. 167 <sup>th</sup> Street 2 <sup>nd</sup> Floor No. Miami Beach, FL 33162	President
DARIA S. WEISSER	801 N.E. 167 <sup>th</sup> Street 2 <sup>nd</sup> Floor No. Miami Beach, FL 33162	Secretary
JUSTIN P. WEISSER	801 N.E. 167 <sup>th</sup> Street 2 <sup>nd</sup> Floor No. Miami Beach, FL 33612	Treasurer

XI.

The names and post office address of each member of this Certificate of Incorporation, and a statement of the number of shares of stock which each mutually agrees to take, are as follows:

<u>NAME</u>	<u>POST OFFICE ADDRESS</u>	<u>SHARES</u>
MICHAEL H. WEISSER	801 NE 167 <sup>th</sup> Street 2 <sup>nd</sup> Floor North Miami Beach, FL 33162	100

XII.

The Corporation may, by action taken at any meeting of the Board of Directors, sell, lease or exchange all of its property, and assets including its goodwill and its corporate franchises or any property or assets essential to its corporate business upon such terms

and conditions as its Board of Directors deem expedient when and as authorized by the affirmative vote of stockholders of record holding stock in the corporation entitling them to exercise at least a majority of the voting power on such proposal, provided, however, that no vote or consent of stockholders shall be necessary for a transfer of assets by way of mortgage, or in trust or in a pledge to secure indebtedness of the Corporation.

It is the intention that the objects, purposes and powers specified and enumerated herein, shall, except where otherwise expressed, be, nowise limited or restricted by reference to or inference from the terms of any other clauses or paragraph of this Certificate of Incorporation, but that the objects, purposes and powers specified and enumerated herein and each of the clauses and paragraphs hereof shall be regarded as independent objects, purposes and powers of the Corporation.

From time to time, to determine whether and to what extent and at what time and places and under what conditions and regulations the accounts and books of this corporation (other than stock books or any of them) shall be open to the inspection of stockholders; and no stockholder shall have any rights of inspection of any accounts, books or documents of this Corporation except as conferred by statute, unless authorized by a resolution of the stockholders by statute.

The executive committee's right to exercise all powers of the Board of Directors is subject to the specific limits on the power of the

Board contained in Article II requiring the vote to the Independent Director for certain items provided therein.

This Corporation may in its By-Laws confer powers upon its Directors in addition to the foregoing and in addition to the powers and authorities conferred upon them by the Statutes.

Both stockholders and directors shall have power to hold their meetings, and to have one or more offices within or without the State of Florida, and to keep the books of this Corporation (subject to the provisions of the Statutes).

The Corporation shall have a President, who shall be a Director, a Vice President, a Secretary and a Treasurer, and may also have one or more additional Vice Presidents, assistant Secretaries and assistant Treasurers, and such other officers, agents, and factors as may be deemed necessary. All officers, agents and factors shall be chosen in such manner, hold their offices for such terms and have such powers and duties as may be prescribed by the By-Laws. The same person may hold two or more offices except the President, who shall not also be the Secretary of the Corporation.

#### XIII.

The Corporation reserves the right to amend, alter, change or repeal any provisions contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by the Statutes, and all rights conferred upon the stockholders herein are granted, subject to this reservation. The rights provided in this section are subject to

the limits on such actions imposed in Article II.


XIV.

In pursuance of Chapter 48.091, Florida Statutes, the following is submitted in compliance with said Act:

FIRST--That CP HAZARD MANAGEMENT COMPANY, INC. desiring to organize under the laws of the State of Florida with its principal office, as indicated in the Certificate of Incorporation, at City of North Miami Beach, County of Dade, State of Florida, has named MICHAEL H. WEISSER located at 801 NE 167<sup>th</sup> Street, 2nd Floor, City of North Miami Beach, County of Dade, State of Florida, as its agent to accept service of process within this State.


ACKNOWLEDGMENT:

Having been named to accept service of process for the above stated Corporation, at place designated in this Certificate, I hereby accept to act in this capacity, and agree to comply with the provisions of said Act relative to keeping open said office.

  
RESIDENT AGENT  
MICHAEL H. WEISSER

We, the undersigned, being all of the original subscribers to the capital stock hereinbefore named, for the purpose of forming a corporation to do business, both within and without the State of Florida, do make, subscribe, acknowledge, and file this Certificate hereby declaring and certifying that the facts herein stated are true, and do respectively agree to take the number of shares of stock

hereinabove set forth and accordingly, have hereunto set our hands and seals this 23 day of November, 2004.

  
MICHAEL H. WEISSER

STATE OF FLORIDA

COUNTY OF DADE

I HEREBY CERTIFY that on this 23 day of November, 2004, before me personally appeared MICHAEL H. WEISSER, to me well known to be the Incorporator(s) described herein, and who signed the foregoing Certificate of Incorporation, and who acknowledged before me that he signed, sealed and delivered the same for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my official hand and seal at Miami, Dade County, Florida this 23 day of November, 2004.

  
NOTARY PUBLIC

My Commission Expires:



Kim M. Riedy  
MY COMMISSION # D0053379 EXPIRES  
December 19, 2005  
BONDED THRU TROY FAIN INSURANCE, INC