

P05000072238

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BASIC AMENDMENT

CREST WATERFORD LAKES HOLDINGS, INC.

Certificate of Status	0
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Amended 6-24-05



FLORIDA DEPARTMENT OF STATE

Glenda E. Hood
Secretary of State

June 24, 2005

CREST WATERFORD LAKES HOLDINGS, INC.
801 BRICKELL KEY BLVD STE 2111
MIAMI, FL 33131

SUBJECT: CREST WATERFORD LAKES HOLDINGS, INC.
REF: P05000072238

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refile the complete document, including the electronic filing cover sheet.

Please accept our apology for failing to mention this in our previous letter.

A certificate must accompany the Restated Articles of Incorporation setting forth either of the following statements: (1) The restatement was adopted by the board of directors and does not contain any amendment requiring shareholder approval. OR (2) If the restatement contains an amendment requiring shareholder approval, the date of adoption of the amendment and a statement setting forth the following: (a) the number of votes cast for the amendment by the shareholders was sufficient for approval (b) If more than one voting group was entitled to vote on the amendment, a statement designating each voting group entitled to vote separately on the amendment and a statement that the number of votes cast for the amendment by the shareholders in each voting group was sufficient for approval by that voting group.

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Carol Mustain
Document Specialist

FAX Aud. #: E05000147165
Letter Number: 705A00043139

Division of Corporations - P.O. BOX 6327 -Tallahassee, Florida 32314

H05000147165 3

**AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF**

CREST WATERFORD LAKES HOLDINGS, INC.

The undersigned, for the purpose of forming a corporation under the Florida General Corporation Act, adopts the following Amended and Restated Articles of Incorporation:

ARTICLE I

NAME

The name of the corporation is **CREST WATERFORD LAKES HOLDINGS, INC.** (the "Corporation").

PRINCIPAL ADDRESS

The principal address of the Corporation is 801 Brickell Key Blvd., Suite 2111, Miami, Florida, 33131.

The mailing address of the Corporation is 801 Brickell Key Blvd., Suite 2111, Miami, Florida 33131.

ARTICLE II

REGISTERED OFFICE AND AGENT

The street address of the initial registered office of the Corporation is: 801 Brickell Key Blvd., Suite 2111, Miami, Florida 33131, and the name of the initial registered agent of the Corporation at such address is Scott Podvin.

ARTICLE III

DURATION

The duration of the Corporation is perpetual.

ARTICLE IV

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Professional Association

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H05000147165 3

PURPOSES

The general purposes for which the Corporation is organized are:

- (1) To hold and own a membership interest (the "Membership Interest") in PGBG Crest, LLC, a Florida limited liability company ("PGBG") and to act as managing member of PGBG.
- (2) To serve and act as the property manager in connection with the management of the real property and improvements located at 701 Brittany Lakes Lane, Orlando, Florida 32828 (the "Property"), which Property is owned by The Crest at Waterford Lakes, LLC, a Florida limited liability company (the "Owner Entity").
- (3) To serve and act as the developer in connection with the renovation and condominium conversion of the Property (the "Project").
- (4) To do such other things as are incidental to the foregoing or necessary or desirable in order to accomplish the foregoing.

ARTICLE V

POWERS OF THE CORPORATION

The Corporation shall have the same powers, construed as broadly as possible, of an individual to do all things necessary and convenient to carry out its purposes, business and affairs, subject to any limitations imposed by applicable law or these Amended and Restated Articles of Incorporation.

ARTICLE VI

AUTHORIZED SHARES

The aggregate number of shares which the Corporation is authorized to issue and have outstanding at any time is **ONE HUNDRED (100)** shares of common stock. Such shares shall be of a single class, and shall have a par value of **One Dollar (\$1.00)** per share. The foregoing may be amended at any time as provided in the Bylaws of the Corporation and by applicable law.

All holders of shares of common stock shall be identified with each other in every respect and the holders of common shares shall be entitled to have unlimited voting rights on all shares and be entitled to one vote for each share on all matters on which shareholders have the right to vote. All holders of shares of common stock, upon the

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H05000147165 3

dissolution of the Corporation, shall be entitled to receive the net assets of the Corporation. No holder of shares of stock of any class shall have any preemptive right to subscribe to or purchase any additional shares of any class, or any bonds or convertible securities of any nature; provided, however, that the Board of Director(s) may, in authorizing the issuance of shares of stock of any class, confer any preemptive right that the Board of Director(s) may deem advisable in connection with such issuance.

The Board of Director(s) of the Corporation may authorize the issuance at any time and from time to time of additional shares of its stock of any class, whether now or hereafter authorized, or securities convertible into shares of its stock of any class, whether now or hereafter authorized, for such consideration as the Board of Director(s) may deem advisable, subject to such restrictions or limitations, if any, as may be set forth in the Bylaws of the Corporation.

The Board of Director(s) of the Corporation may, by amending or restating these Amended and Restated Articles of Incorporation, classify or reclassify any unissued stock from time to time by setting or changing the preferences, conversions or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or term or conditions of redemption of the stock.

Notwithstanding anything in these Amended and Restated Articles of Incorporation to the contrary, any and all rights of the owners of the shares of stock of this Corporation may be subject to a Shareholders' Agreement governing the rights and powers of the shareholders of the Corporation and the transferability of the shares of stock of the Corporation. A copy of the Shareholders' Agreement, if any, shall be kept on file by the Secretary of the Corporation.

ARTICLE VII

REGISTERED OWNER(S)

The Corporation, to the extent permitted by law, shall be entitled to treat the person in whose name any share or right is registered on the books of the Corporation as the owner thereto, for all purposes, and except as may be agreed to in writing by the Corporation, the Corporation shall not be bound to recognize any equitable or other claim to, or interest in, such share or right on the part of any other person, whether or not the Corporation shall have notice thereof.

ARTICLE VIII

BYLAWS

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The Board of Director(s) of the Corporation shall have the power, without the assent or vote of the shareholders, to make, alter, amend or repeal the Bylaws of the Corporation, but the affirmative vote of a number of Directors equal to a majority of the number who would constitute a full Board of Director(s) at the time of such action shall be necessary to take any action for the making, alteration, amendment or repeal of the Bylaws.

ARTICLE IX

DIRECTORS

The Directors of the Corporation shall be elected, appointed and removed from office by a majority of the Shareholders or as otherwise specified in the By-Laws of the Corporation. The number of Directors constituting the Board of Directors of the Corporation shall be determined in accordance with the By-Laws, but shall not be less than one (1). The number of Directors constituting the initial Board of Directors is (1). The name and address of the person who is to serve as member of the initial Board of Directors is:

Scott Podvin

801 Brickell Key Blvd., Suite 2111
Miami, Florida 33131

The officers of the Corporation shall be elected, appointed and removed from office by a majority of the Directors or as otherwise specified in the By-Laws of the Corporation. The following person(s) shall serve as the initial officer(s) of the Corporation and shall hold the position/office designated beside his or her name until his or her resignation or until a successor is duly elected and appointed:

<u>Office</u>	<u>Name</u>	<u>Address</u>
President/Secretary/ Treasurer	Scott Podvin	801 Brickell Key Blvd., Suite 2111 Miami, Florida 33131

ARTICLE X

EFFECTIVE DATE

These Amended and Restated Articles of Incorporation shall be effective immediately upon approval of the Secretary of State, State of Florida.

ARTICLE XI

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AMENDMENT

The Corporation reserves the right to amend, alter, change or repeal any provision contained in these Amended and Restated Articles of Incorporation, or in any amendment hereto, or to add any provision to these Amended and Restated Articles of Incorporation or to any amendment hereto, in any manner now or hereafter prescribed or permitted by the provisions of any applicable statute of the State of Florida, and all rights conferred upon shareholders in these Amended and Restated Articles of Incorporation or any amendment hereto are granted subject to this reservation. In the event of a conflict between the terms and conditions of these Amended and Restated Articles of Incorporation and the Bylaws of the Corporation, the terms and conditions of these Amended and Restated Articles of Incorporation shall control.

ARTICLE XIIINCORPORATOR

The name and address of the incorporator of the Corporation is:

Scott Podvin
801 Brickell Key Blvd., Suite 2111
Miami, Florida 33131

ARTICLE XIIIINDEMNIFICATION

The Corporation shall indemnify each director, officer, incorporator and shareholder of the corporation against any and all liability and expenses incurred by him in connection with or arising out of any action, suit or proceeding in which he may be involved, by reason of his being or having been a director, officer, incorporator or shareholder of the Corporation to the full extent permitted by the laws of the State of Florida.

ARTICLE XIVSINGLE PURPOSE ENTITY PROVISIONS

So long as the mezzanine loan from NYLIM-GCR Fund I-2002, L.P., a Delaware limited partnership (the "Mezzanine Lender") to PGBG in the original principal amount of \$5,200,000.00 (the "Mezzanine Loan") is outstanding, the Corporation hereby covenants and agrees that it:

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- (a) shall not own and will not own any asset or property other than (i) the Membership Interest and (ii) incidental personal property necessary for the ownership of such interests;
- (b) shall not enter into any contract or agreement with any affiliate of the Corporation, PGBG or the Owner Entity or any constituent party of Corporation, PGBG or Owner Entity, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's length basis with third parties other than any such party;
- (c) has not incurred and shall not (and the Corporation agrees it will not permit PGBG or Owner Entity to) incur any indebtedness other than (i) in the case of PGBG, the Mezzanine Loan and (ii) in the case of Owner Entity, (A) the loan from Corus Bank, N.A. (the "Senior Lender") in the original principal amount of \$32,300,000.00 (the "Senior Loan"), (B) unsecured trade payables and operational debt of PGBG, Owner Entity and indebtedness incurred in the financing of equipment and other personal property used on the Project not evidenced by a note and in an aggregate amount not exceeding \$100,000.00 at any one time; provided that any indebtedness incurred pursuant to subclause (ii)(B) shall be (x) not more than sixty (60) days past due and (y) incurred in the ordinary course of business. No indebtedness other than the Senior Loan may be secured (subordinate or pari passu) by the Project;
- (d) has not made and will not make, any loans or advances to any third party (including any affiliate or constituent party of the Corporation, PGBG or Owner Entity), and shall not acquire obligations or securities of its affiliates;
- (e) is and will remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from the Corporation's own assets as the same shall become due;
- (f) has done or caused to be done and will do all things necessary to observe organizational requirements and formalities and preserve its existence, and will not permit any constituent party of the Corporation, PGBG or Owner Entity to, amend, modify or otherwise change the articles of incorporation, articles of organization and operating agreement or other organizational documents of the Corporation, PGBG, Owner Entity or such constituent party without the prior consent of the Mezzanine Lender in any manner that (i) violates the single purpose covenants set forth

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herein, or (ii) amends, modifies or otherwise changes any provision thereof that by its terms cannot be modified at any time while the Mezzanine Loan is outstanding or by its terms cannot be modified without Mezzanine Lender's consent;

- (g) will (i) maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party, (ii) not cause or permit its assets to be listed as assets on the financial statement of any other person (provided, however, that the Corporation's assets may be included in a consolidated financial statement of its affiliates provided that (A) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the Corporation and such affiliates and to indicate that the Corporation's assets and credit are not available to satisfy the debts and other obligations of such affiliates or any other person and (B) such assets shall be listed on the Corporation's own separate balance sheet), (iii) file its own tax returns (to the extent the Corporation is required to file any such tax returns) and will not file a consolidated federal income tax return with any other person and (iv) maintain its books, records, resolutions and agreements as official records;
- (h) 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 any affiliate or any constituent party thereof) and shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize separate stationery, invoices and checks bearing its own name;
- (i) 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;
- (j) will not (nor permit any constituent party thereof) to seek or effect the dissolution, winding up, liquidation, consolidation or merger, in whole or in part, of the Corporation;
- (k) will not commingle its funds and other assets with those of any affiliate or constituent party or any other person, and will hold all of its assets in its own name;

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- (l) has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party or any other person;
- (m) will not guarantee or become obligated for the debts of any other person and does not and will not hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other person;
- (o) will not permit any affiliate or constituent party independent access to its bank accounts and will cause each PGBG and Owner Entity not to permit any affiliate or constituent party independent access to their bank accounts;
- (p) shall pay the salaries of its own employees (if any) from its own funds and maintain a sufficient number of employees (if any) in light of its contemplated business operations;
- (q) shall compensate each of its consultants and agents from its funds for services provided to it and pay from its own assets all obligations of any kind incurred; and
- (r) shall cause PGBG and Owner Entity to comply with the single purpose entity provisions set forth in Section 13.1 of their respective operating agreements.

The restatement was adopted by the Board of Directors and does not contain any amendments requiring Shareholder approval.

Executed by the undersigned, on the 23 day of June, 2005.

By: 
Scott Podvin

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H05000147165 3

**ACKNOWLEDGMENT OF APPOINTMENT
BY REGISTERED AGENT**

Having been named the registered agent for the above Corporation at the place designated in the foregoing Amended and Restated Articles of Incorporation, I hereby accept the same and agree to act in this capacity, and agree to comply with the provisions of Florida law relative to keeping the registered office open.

REGISTERED AGENT

By: 
Scott Podvin, President

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