

Document Number Only

P93000061349

CT CORPORATION SYSTEM

660 EAST JEFFERSON STREET

Requestor's Name
TALLAHASSEE, FL 32301

Address
222-1092

City State Zip Phone

CORPORATION(S) NAME

300002320163--2
-10/14/97--01048--032
*****35.00 *****35.00

The Westwind Group, Inc.

- ☐ Profit
☐ NonProfit
☐ Limited Liability Co.
☐ Foreign
- ☒ Amendment
- ☐ Merger
☐ Mark
☐ Dissolution/Withdrawal
- ☐ Limited Partnership
☐ Reinstatement
☐ Certified Copy
- ☐ Annual Report
☐ Reservation
☐ Photo Copies
- ☐ Other
☐ Change of R.A.
☐ Fictitious Name Filing
☐ CUS
- ☐ Call When Ready
☒ Walk In
☐ Mail Out
- ☐ Call if Problem
☐ Will Wait
- ☐ After 4:30
☒ Pick Up

Name
Availability
Document Examiner
Updater
Verifier
Acknowledgment
W.P. Verifier

CR2E031 (1-89)

FILED
97 OCT 14 PM 1:55
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

RECEIVED
97 OCT 14 PM 12:12
DIVISION OF CORPORATION

10/14

Robert
10/16



FLORIDA DEPARTMENT OF STATE
Sandra B. Mortham
Secretary of State

October 14, 1997

CT CORPORATION SYSTEM

TALLAHASSEE, FL

SUBJECT: THE WESTWIND GROUP, INC.
Ref. Number: P93000061349

We have received your document for THE WESTWIND GROUP, INC. and your check(s) totaling \$35.00. However, the enclosed document has not been filed and is being returned for the following correction(s):

The registered agent must sign accepting the designation.

The document must contain written acceptance by the registered agent, (i.e. "I hereby am familiar with and accept the duties and responsibilities as registered agent for said corporation/limited liability company"); and the registered agent's signature.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 487-6880.

Karen Gibson
Corporate Specialist

Letter Number: 597A00050336

10/15

* Please give filing date of

October 14th

97 OCT 15 PM 4:18
RECEIVED

RESTATED ARTICLES OF INCORPORATION

OF

THE WESTWIND GROUP, INC.

FILED
97 OCT 14 PM 1:55
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The undersigned, being the Secretary of The Westwind Group, Inc., a Florida corporation (the "Corporation"), does hereby certify that, pursuant to written action in lieu of a meeting in accordance with the laws of the State of Florida, the following resolution was adopted by the sole shareholder and the sole Director of the Corporation to be effective as of October 10, 1997.

RESOLVED, that the Articles of Incorporation of the Corporation be, and the same hereby are, restated, and the following Restated Articles of Incorporation take the place of and supersede the existing Articles of Incorporation and all amendments thereto, pursuant to the laws of the State of Florida, as follows:

ARTICLE 1

NAME

- 1.1 The name of the Corporation shall be: **The Westwind Group, Inc.**

ARTICLE 2

REGISTERED OFFICE AND AGENT

- 2.1 The address of its registered office in the State of Florida is: 1200 South Pine Island, Plantation, Florida. The name of the registered agent is: CT Corporation System.

ARTICLE 3

NOTICES

- 3.1 The address where the Division may mail notices: Attention: Stephen O. LaBreche at The Westwind Group, Inc., 12555 High Bluff Drive, Suite 120, San Diego, California 92130.

ARTICLE 4

CAPITAL SHARES

- 4.1 **Authorized Shares.** The aggregate number of capital shares which the Corporation shall have the authority to issue is 100,000 shares. The issuance and transfer of stock of the Corporation is restricted. Stock may be issued or transferred only after authorization by Burger King Corporation in accordance with the terms and conditions outlined in the franchise agreement with Burger King Corporation.

- 4.2 **Par Value.** The shares shall be without par value, except that the shares shall have a

par value of one cent per share solely for the purpose of statutes or regulations imposing a tax or fee based upon the capitalization of the Corporation, and shall have a par value fixed by the Board of Directors for the purpose of other statutes or regulations requiring the shares of the Corporation to have a par value.

4.3 Cumulative Voting Denied. There shall be no cumulative voting for directors.

4.4 Preemptive Rights Denied. No holder of any shares of the Corporation shall be entitled, as a matter of right, to any preferential, preemptive, or other rights to purchase any new or additional shares of the Corporation of any class or series, or any options, warrants or rights to purchase, subscribe for, or otherwise acquire, any such new or additional shares, or any shares, bonds, notes, debentures, or other securities convertible into or carrying options, warrants, or rights to purchase, subscribe for, or otherwise acquire any such new or additional shares.

4.5 Voting. The shareholders shall take action by the affirmative vote of the holders of a majority of the voting power of the shares present at a duly held meeting and entitled to vote, except where a larger proportion or number is required for a particular action by the Articles of Incorporation or Bylaws of the Corporation or by the laws of the State of Florida.

ARTICLE 5

DIRECTORS

5.1 Majority Vote. The Board of Directors shall take action by the affirmative vote of a majority of directors present at a duly held meeting subject to the requirements of Section 8.1 hereof, except where the affirmative vote of a larger proportion or number of directors is required by the Articles of Incorporation or Bylaws of the Corporation or by the laws of the State of Florida.

5.2 Action Without Meeting. Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting by written action that is, or counterparts of which in the aggregate are, signed by the number of directors that would be required to take the same action at a meeting of the Board at which all directors entitled to vote were present, except as to those matters which require shareholder approval, on which matters the written action shall be signed by all members of the Board of Directors then in office.

5.3 Limitation of Director Liability. A director of the Corporation shall not be personally liable to the Corporation or to its shareholders for monetary damages for any breach of fiduciary duty as a director to the fullest extent permitted by the Florida Statutes. If the Florida Statutes are amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director to the Corporation, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by the amended Florida Statutes. Any repeal or modification of this Section 5.3 by the shareholders of the Corporation shall be prospective only and shall not adversely affect any limitation on the personal liability of, or any right or protection as, a director of the Corporation existing at, or with respect to any act or omission which occurred prior to, the date of such repeal or modification.

ARTICLE 6

PURPOSE AND POWERS

6.1 The Corporation is organized solely for the purpose of operating currently owned Burger King restaurants and those additional Burger King restaurants acquired or developed in accordance with the Credit Documents (as defined in Section 8.1 hereof). The Corporation shall possess all power necessary to conduct business in connection with the stated purpose for which it is organized, including but not limited to, all those powers expressly conferred upon business corporations by the Florida Statutes, as the same may from time to time be amended, together with those powers implied therefrom.

ARTICLE 7

INDEMNIFICATION

7.1 Directors, officers, employees, and agents of the Corporation shall be indemnified to the maximum extent permitted by the Florida Statutes, as the same exists or may hereafter be amended, for expenses and liabilities arising by reason of their position with, or by acts in such capacities on behalf of, the Corporation or another corporation which they may serve at the request of the Corporation. Any obligation of the Corporation for indemnification of an officer, employee or agent of the Corporation who holds, directly or indirectly, a ten percent (10%) or greater equity interest in the Corporation, and any obligation of the Corporation for indemnification of a director of the Corporation arising out of any claim against such director for actions taken in his or her capacity as a director of the Corporation and in contravention of the covenants set forth in Section 8.1 hereof, including the breach by such director of his or her fiduciary duty to creditors of the Corporation pursuant to Section 8.1(y) hereof, shall be subordinate to any obligation of the Corporation under the Credit Documents (as defined in Section 8.1 hereof).

ARTICLE 8

SEPARATENESS COVENANTS

8.1 So long as any Obligations (as defined in the Credit Documents) are outstanding under the Loan and Security Agreement and related documents between the Corporation and Credit Suisse First Boston Mortgage Capital LLC (the "Credit Documents"):

- a. The Corporation shall not incur or assume any indebtedness other than Permitted Indebtedness (as defined in the Credit Documents) or as otherwise permitted under the Credit Documents;
- b. The Corporation shall comply with all covenants set forth in the Credit Documents;
- c. The Corporation shall hold itself out as a separate entity by conducting its

own business in its own name and through its duly authorized officers or agents, and shall conduct its business so as not to mislead others as to the identity of the entity with which they are concerned;

- d. The Corporation shall take action to correct any known misunderstanding regarding its separate identity;
- e. Except as otherwise permitted or required by the Credit Documents, the Corporation shall conduct its business separate and apart from that of its Affiliates (used herein as defined in the Credit Documents), and the Corporation shall be responsible for a fair and reasonable allocation of any overhead for shared office space;
- f. The Corporation shall maintain corporate books and records (including tax, accounting, financial reporting, payroll and legal) separate from any other person or entity; provided, that the books and records of the Corporation may be kept (subject to any provision contained in the statutes) inside or outside the State of its incorporation at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation;
- g. The Corporation shall maintain bank accounts and checks separate from any other person or entity, except as permitted or required by the Credit Documents;
- h. The Corporation shall maintain careful records of all transactions, including transactions with its Affiliates;
- i. The Corporation shall not commingle its assets with those of any other person or entity, except as permitted or required by the Credit Documents;
- j. Except as permitted or required by the Credit Documents, the Corporation shall maintain separate financial statements and shall not include any of its Affiliates or be included with any of its Affiliates in any combined or consolidated financial statements that do not clearly identify the separate identity of the Corporation and any Affiliates included in such combined or consolidated financial statements;
- k. The Corporation shall identify itself as a separate entity in each report, tax return and business transaction in which it is involved;
- l. The Corporation shall maintain adequate capital in light of its contemplated business operations;
- m. The Corporation shall pay its own liabilities (including its fair and

reasonable allocation of any overhead for shared office space and the salary and benefits of its own employees) out of its own funds;

- n. The Corporation shall have separate employees and shall maintain a sufficient number of employees in light of its contemplated business operations;
- o. The Corporation shall not guarantee or become obligated for the debts of any other person or entity or hold out its credit as being available to satisfy the debts of any other person or entity, except as otherwise permitted or required by the Credit Documents;
- p. The Corporation shall not pledge its assets for the benefit of any other person or entity or make any loans or advances to any person or entity, except as otherwise permitted or required by the Credit Documents;
- q. The Corporation shall observe all applicable corporate formalities, including separate and regular meetings of its Board of Directors, and shall maintain minutes of all such meetings; provided, that the Board of Directors of the Corporation may take action by unanimous written consent in lieu of a meeting to the fullest extent permitted by applicable law;
- r. The Corporation shall maintain an arms-length relationship with its Affiliates and shall transact business with an Affiliate only on terms which are reasonably believed by the Corporation to be fair and reasonable and comparable to those available from third parties;
- s. The Corporation shall not acquire the obligations or securities of its shareholder or any Affiliate;
- t. The Corporation shall act in a limited capacity to effectuate the intent of its contemplated transactions;
- u. The Corporation shall not enter into any agreement or transaction, unless (i) it does so without the intent to defraud its creditors, (ii) at the time it enters into such agreement or transaction, the Corporation is solvent, and (iii) such agreement or transaction and the performance by the Corporation of its obligations in connection therewith will not render the Corporation insolvent;
- v. The Corporation shall not engage in any dissolution, liquidation, consolidation, merger, or sale of all or substantially all of its assets without the unanimous affirmative vote in favor thereof by the entire Board of Directors of the Corporation (including the Independent Director), or except as otherwise permitted by the Credit Documents;

- w. Notwithstanding anything to the contrary set forth elsewhere in these Articles of Incorporation or in the Bylaws of the Corporation, the Corporation shall not amend or repeal any provision of the Articles of Incorporation or the Bylaws of the Corporation without the unanimous affirmative vote in favor thereof by the entire Board of Directors of the Corporation (including the Independent Director), or as otherwise permitted by the Credit Documents;
- x. The Board of Directors of the Corporation shall consist of no more than three persons, one of whom shall be an Independent Director. As used herein, a person qualifies as an "Independent Director" if such person (i) does not have any direct or material indirect economic interest in the Corporation, any Affiliate of the Corporation or any person with whom the Corporation has any material contractual relationship, and (ii) does not have any connection to the Corporation or to any Affiliate of the Corporation as an officer, director, employee, promoter, underwriter, trustee, or person performing similar functions, and (iii) does not have any family relative that is a person covered by (i) or (ii); provided, however, that notwithstanding subparagraph (ii) above, the same person may serve as an Independent Director of the Corporation and any Affiliate that is a party to the Credit Documents;
- y. The Corporation shall not voluntarily commence a case or consent to the filing of such a case with respect to itself under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous affirmative vote in favor thereof by the entire Board of Directors of the Corporation (including the Independent Director), or as otherwise permitted by the Credit Documents, and the Independent Director shall have a fiduciary duty to creditors of the Corporation and shall be required to consider the interests of creditors of the Corporation in connection with any decision or action with respect to the filing of a petition for bankruptcy on behalf of the Corporation; and
- z. The Corporation shall maintain its valid existence and good standing in the State of its incorporation and shall remain qualified to conduct business under applicable law in each state in which Collateral (as defined in the Credit Documents) owned by the Corporation and subject to the Credit Documents is located.

IN WITNESS WHEREOF, I have subscribed my name this 10th day of October, 1997.



Stephen O. LaBrecche, Secretary

G:\WPDATA\S\STRAUSS.M\43\DOC\ARTSFL2.DOC

HAVING BEEN NAMED AS REGISTERED AGENT AND TO RECEIVE SERVICE OF
PROCESS FOR THE ABOVE STATED CORPORATION AT THE PLACE DESIGNATED
IN THESE PROVISIONS, I HEREBY ACCEPT THE APPOINTMENT AS
REGISTERED AGENT AND AGREE TO ACT IN THIS CAPACITY. I FURTHER
AGREE TO COMPLY WITH THE PROVISIONS OF ALL STATUTES RELATIVE TO
THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES, AND I AM
FAMILIAR WITH AND ACCEPT THE OBLIGATIONS OF MY POSITION AS
REGISTERED AGENT.

DATE: 10/14/97

CT CORPORATION SYSTEM

BY: Connie Bryan

Connie Bryan,
Special Assistant Secretary