

S141059

Florida Department of State
Division of Corporations
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STATE OF FLORIDA
TALLAHASSEE

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DIVISION OF CORPORATIONS

BASIC AMENDMENT

PH RETAIL, INC.

Certificate of Status	0
Certified Copy	0
Page Count	06
Estimated Charge	\$35.00

Amend MD 10/28



FLORIDA DEPARTMENT OF STATE

Glenda E. Hood
Secretary of State

October 27, 2004

PH RETAIL, INC.
1717 N BAYSHORE DR
STE 102
MIAMI, FL 33132SUBJECT: PH RETAIL, INC.
REF: S14059

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.

* The date of adoption of each amendment must be included in the document.

* The amendment must be adopted in one of the following manners:

(1) If an amendment was approved by the shareholders, one of the following statements must be contained in the document.

(a) A statement that the number of votes cast for the amendment by the shareholders was sufficient for approval, -or-

(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.

(2) If an amendment was adopted by the incorporators or board of directors without shareholder action.

(a) A statement that the amendment was adopted by either the incorporators or board of directors and that shareholder action was not required.

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) 245-6882.

Maryanne Dickey
Document SpecialistFAX Aud. #: H04000214483
Letter Number: 104A00061903

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

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SPE PROVISIONS FOR
ARTICLES OF INCORPORATION

CORPORATE BORROWER

AMENDMENT OF ARTICLE OF INCORPORATION

The following document amends and supplements the original articles of incorporation of PH Retail Inc., a Florida corporation, filed with the Secretary of State on November 21, 1990. If these articles are inconsistent with the articles of incorporation filed on November 21, 1990, these articles shall control and supersede the original articles filed.

ARTICLE ONE: PURPOSE.

The business and purpose of PH Retail, Inc., a Florida corporation (the "Corporation") shall consist solely of the following:

- a. The acquisition, ownership, operation and management of the real estate project known as PH Retail, Inc. located at 1717 North Boshore Drive, Miami, Florida 33132 (the "Property"), pursuant to and in accordance with these Articles of Incorporation; and
- b. to engage in such other lawful activities permitted to corporations by the [General Corporation Laws] of the State of Florida as are incidental, necessary or appropriate to the foregoing.

ARTICLE TWO

a. Notwithstanding any other provision of these Articles, any contrary or inconsistent provision of the by-laws of the Corporation or any other document or instrument governing the affairs of the Corporation, or any provision of law that otherwise so empowers the Corporation, so long as the loan in the initial principal amount of \$12,200,000.00 (the "Loan") and any other obligations secured by that certain [Loan Agreement/Mortgage dated October 27, 2004, in favor of Citigroup Global Markets Realty Corp. a New York Corporation, as lender] (the "Mortgage") remain outstanding and not discharged in full, without the prior written consent of the holder of the Mortgage (the "Lender"), the Corporation shall have no authority to:

- (i) conduct its affairs in any manner contravening or inconsistent with the provisions of Article [Three] of these Articles;
- (ii) dissolve or liquidate the Corporation or consent to any such dissolution or liquidation;
- (iii) sell or lease, or otherwise dispose of all or substantially all of the assets of the Corporation; or
- (iv) amend, modify or alter Articles [One, Two or Three] of these Articles [Note: cross reference to actual sections addressed in this form].

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TALLAHASSEE, FLORIDA

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b. Notwithstanding any other provision of these Articles, any contrary or inconsistent provision of the by-laws of the Corporation or any other document or instrument governing the affairs of the Corporation, or any provision of law that otherwise so empowers the Corporation, so long as the Loan or any other obligations secured by the Mortgage remains outstanding and not discharged in full, the Corporation shall have no authority, unless such action has been approved by a unanimous vote of the Corporation's Board of Directors, including the affirmative vote of the Independent Directors, to file or consent to the filing of any voluntary or involuntary bankruptcy or insolvency petition with respect to the Corporation or otherwise initiate or consent to proceedings to have the Corporation adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Corporation, or file a petition seeking or consenting to reorganization or relief of the Corporation as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Corporation; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Corporation or of all or any substantial part of the properties and assets of the Corporation, or make any general assignment for the benefit of creditors of the Corporation, or admit in writing the inability of the Corporation to pay its debts generally as they become due or declare or effect a moratorium on the Corporation's debt or take any corporate action in furtherance of any such action.

ARTICLE THREE: SEPARATENESS/OPERATIONS MATTERS.

The Corporation has heretofore conducted and shall at all times hereafter conduct its business and operations in strict accordance and compliance with the following provisions:

- (a) the Corporation has not and shall not own any asset or property other than (i) the Property, and (ii) incidental personal property necessary for the ownership or operation of its interest in the Property;
- (b) the Corporation has not and shall not engage in any business or activity other than the ownership, management and operation of the Property; the Corporation has conducted and operated and will conduct and operate its business as presently conducted and operated;
- (c) the Corporation has not and shall not enter into or be a party to any transaction, contract or agreement with any guarantor of the debt secured by the Mortgage or any part thereof (a "Guarantor") or with any Affiliate, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with unrelated third parties;
- (d) the Corporation has not and shall not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the debt secured by the Mortgage and (ii) trade and operational debt incurred by the Corporation in the ordinary course of business with trade creditors in connection with owning, operating and maintaining the Property, in such amounts as are normal and reasonable under the circumstances, provided such debt is not evidenced by a promissory note or other security instrument and is not at any time in an aggregate amount in excess of the lesser of two percent of the original Loan amount or \$244,000.00, and further provided that all such trade debts are paid within 30 days after the same are incurred. No indebtedness other than the debt secured by the Mortgage may be secured (senior, subordinated, or pari passu) by the Property;
- (e) the Corporation has not and shall not make any loans or advances to any Guarantor, Affiliate or other person or entity;
- (f) the Corporation has remained and shall remain solvent and shall pay its debts from its assets as the same shall become due;
- (g) the Corporation has done and shall do all things necessary to preserve its existence, and the Corporation has not and shall not change the partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents of the Corporation or a Guarantor in a manner which would adversely affect the Corporation's existence as a single-purpose entity, without the prior written consent of Lender;
- (h) the Corporation has maintained and shall maintain its financial statements, accounting records, books and records, bank accounts and other entity documents separate from those of their respective Affiliates or any other person or entity, and the Corporation has filed and will file its own tax returns. The Corporation has maintained and shall maintain its books, records, resolutions and agreements as official records;

- (i) the Corporation has been and shall be, and at all times has held and will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate, any constituent party of the any Guarantor), shall correct any known misunderstanding regarding its identity or status as a separate entity, has conducted and shall conduct business in its own name, has held and shall hold its assets in its own name, has maintained and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks, has allocated and shall allocate fairly and reasonably any overhead for shared office space and has not and shall not identify itself as a division or part of any Affiliate or other person or entity, or any Affiliate or other person or entity as a division or part of the Corporation;
- (j) the Corporation has preserved and kept and shall preserve and keep in full force and effect its existence, good standing and qualification to do business in the state in which the Property is located and the Corporation has observed and will observe all corporate formalities;
- (k) the Corporation has maintained and shall maintain adequate capital and a sufficient number of employees for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations. The Corporation has paid and will pay the salaries of its own employees;
- (l) the Corporation has not and shall not seek or consent to the dissolution or winding up, in whole or in part, of the Corporation, nor shall the Corporation merge with or be consolidated into any other entity or acquire, by purchase or otherwise, all or substantially all of the business assets of, or any stock or beneficial ownership of, any entity;
- (m) the Corporation has not and shall not commingle the funds or any other assets of the Corporation with those of any Affiliate, any Guarantor or any other person or entity, and the Corporation has paid and shall pay its own liabilities out of its own funds and assets;
- (n) the Corporation has maintained and shall 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, Guarantor or any other person or entity;
- (o) the Corporation has not and shall not assume, guarantee, become obligated for or hold itself out to be responsible for, or hold out its credit as being available to satisfy, or pledge its assets as security for, the debts or obligations of any other person or entity (provided, that the foregoing shall not prevent the Corporation from being and holding itself responsible for expenses incurred or obligations undertaken by the property manager of the Property in respect of its duties regarding the Property);
- (q) the Corporation shall not own any subsidiary, or make any investment in any person or entity;
- (r) the Corporation shall not pledge its assets for the benefit of any other person or entity;
- (s) the members of the Board of Directors of the Corporation shall consider the interests of the creditors of the Corporation in connection with all corporate decisions and actions;
- (t) neither the Corporation nor the members of the Board of Directors of the Corporation shall take any action which, under the terms of these Articles of Incorporation, any certificate of incorporation, by-laws or any voting trust agreement with respect to any

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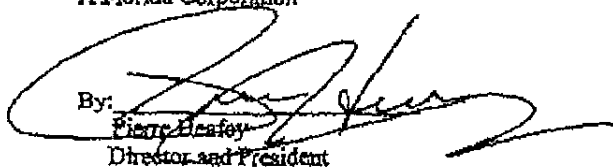
common stock, requires the vote of the Board of Directors of the Corporation unless at the time of such action there shall be at least two members of such Board of Directors who are each an Independent Director;

- (u) the Corporation shall not acquire obligations or securities of any Guarantor or Affiliate; and

The foregoing provisions of this Article shall govern over any contrary or inconsistent provision of these Articles, the by-laws of the Corporation or any other document or instrument governing the affairs of the Corporation.

Each of these amendments was adopted on the 26th day of October, 2004, by the sole director of the corporation, Pierre Heafey. Shareholder action is not necessary to make these amendments to the articles of incorporation.

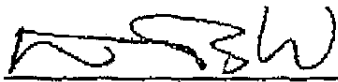
PH Retail, Inc.
A Florida Corporation

By: 
 Pierre Heafey
 Director and President

STATE OF FLORIDA

COUNTY OF DADE

The foregoing instrument was acknowledged before me this 26th day of October, 2004 by Pierre Heafey who is personally known to me or has produced _____ as identification.



 Signature of Notary Public

Print, type or stamp name and commission expiration:



Dennis R. Bedard
Commission #DD201617
Expires: Apr 09, 2007
Bonded Through
Albrite Bonding Co., Inc.

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OCT-28-2004 08:43