

V20251

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TALLAHASSEE FLORIDA

Amen

KIRSCHNER & LEGLER, P.A. ATTORNEYS AT LAW

December 8, 2005

Via Federal Express

Department of State
Division of Corporations
Clifton Building
ATTN: CORPORATE FILINGS
2661 Executive Center Circle
Tallahassee, FL 32301

Re: Articles of Amendment to Articles of Incorporation

Gentlemen:

We enclose for filing with your office, Articles of Amendment to Articles of Incorporation for each of the following entities:

Harbor Walk, Inc.
East Pass Investors, Inc.
Emerald Grande, Inc.

We also enclose our firm's check in the amount of \$131.25 to cover the fees as follows:

Filing of Amendments (3 @ \$35/ea.):	\$105.00
Certified Copies (3 @ \$8.75):	<u>26.25</u>
	\$131.25

Finally, we enclose a pre-paid Fed Ex return envelope for use in returning the Certified Copies to our offices when they are ready. Thank you for your assistance.

Sincerely,



Cindy M. Mullennix

Enclosures

ARTICLES OF AMENDMENT
TO ARTICLES OF INCORPORATION
OF
HARBOR WALK, INC.
Document No. V20251

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SECRETARY OF STATE
TALLAHASSEE FLORIDA

Pursuant to Sections 607.1001, 607.1004, 607.1006, and 607.1009, Florida Business Corporation Act, the following provisions of the Articles of Incorporation of Orthodontic Education Company, a Florida corporation, filed in Tallahassee on October 19, 2004, are hereby amended by adding a new Article VIII thereto to read as follows:

Article VIII
Special Purpose Bankruptcy Remote Entity

This corporation is a special purpose bankruptcy remote entity, and as such the powers of this corporation are at all times hereafter limited as provided in this Article VIII.

A. Definitions. As used in this Article, the following terms shall have the following meanings (defined terms not otherwise defined in these Articles shall have the meaning ascribed to them in the Loan Agreement):

"Indebtedness," with respect to any Person means, without duplication, (a) any indebtedness of such Person for borrowed money (whether by loan, the issuance and sale of debt securities or the sale of any property or asset of such Person to another Person subject to an understanding or agreement, contingent or otherwise, to repurchase such property from such Person), (b) any obligations of such Person for the deferred purchase price of property or services, (c) any obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) any obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) any obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (f) any obligations of such Person as a result of any final judgment rendered against such Person or any settlement agreement entered into by such Person with respect to any litigation unless such obligations are stayed upon appeal (for so long as such appeal shall be maintained) or are fully discharged or bonded within thirty (30) days after the entry of such judgment or execution of such settlement agreement, (g) any obligations, contingent or otherwise, of such Person in respect of acceptances, letters of credit or similar extensions of credit, (h) any Contingent Obligations, (i) any Indebtedness of others referred to in clauses (a) through (h) above or clause (j) below guaranteed directly

or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (1) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (2) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss, (3) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (4) otherwise to assure a creditor against loss, and (j) any Indebtedness referred to in clauses (a) through (i) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness.

"Person" means and includes natural persons, corporations, limited liability companies, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and agencies and political subdivisions thereof and their respective permitted successors and assigns (or in the case of a governmental person, the successor functional equivalent of such Person).

"Borrower" means, collectively, East Pass Investors, Inc., Harbor Walk, Inc. (both Florida corporations) and this corporation.

"Loan Agreement" means that Construction Loan and Security Agreement between the Borrowers and the Lender dated or to be dated as of December 7, 2005 as amended from time to time evidencing and describing a multi-tranche construction loan in the initial aggregate principal amount of approximately \$162,043,000 (the **"Loan"**).

"Loan Documents" means the Loan Agreement, and the following documents as defined in the Loan Agreement: the Note, the Mortgage, the Fee Mortgage, the Assignments, the Environmental Indemnity Agreement, the Cash Management Agreement, the Financing Statements, the Assignment of Architect's Agreement, the Assignment of Construction Contract the Assignment of Contracts, the Assignment of Permits, the Rate Cap Pledge Agreement, the Pledge Agreements, the Tri-Party Agreement, the Completion and Payment Guaranty and all other documents executed for the benefit of Lender and/or delivered to Lender by Borrower, Landlord, CC&R Declarants or Guarantor in connection with the Construction Work and/or Project Improvements, and all other documents, instruments, certificates and other deliveries made by Borrower or Guarantor to Lender in accordance herewith or which otherwise evidence, secure and/or govern the Loan.

"Obligations" means, in the aggregate, all obligations, liabilities and indebtedness of every nature of Borrower from time to time owed to Lender under the Loan Documents, including the principal amount of all debts, claims and indebtedness, accrued and unpaid interest, any exit fees, extension fee (if applicable), yield maintenance premiums and all fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and/or from time to time hereafter owing, due or payable to Lender under the Loan Documents whether before or after the filing of a proceeding under the United States Bankruptcy Code by or against Borrower. The term "Obligations" shall also include any judgment against Borrower or the Mortgaged Property with respect to such obligations, liabilities and indebtedness of Borrower.

B. Limitations. Notwithstanding anything herein or in the Florida Business Corporation Act to the contrary, the corporation:

- (i) has not entered into, and shall not enter into any transaction of merger or consolidation, or liquidate or dissolve itself (or suffer any liquidation or dissolution), or acquire by purchase or otherwise all or substantially all the business or assets of, or stock or other evidence of beneficial ownership of, any Person;
- (ii) except with respect to the Obligations under the Loan Documents, has not and shall not guarantee or otherwise become liable for any obligation of any other Person;
- (iii) has not owned and shall not own any asset other than the Mortgaged Property;
- (iv) has not engaged and shall not engage, directly or indirectly, in any business other than the ownership, management, operation, marketing and sale of the Mortgaged Property and has been and shall remain organized solely for the purpose of the ownership, management, operation, marketing and sale of the Mortgaged Property;
- (v) has not entered into and shall not enter into any contract or agreement with any affiliate, 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 an Affiliate except as disclosed to, and approved by, Lender;
- (vi) has not incurred and shall not incur any indebtedness, secured or unsecured, direct or contingent (including any Contingent Obligation), other than the Loan and other Permitted Indebtedness;
- (vii) has not made and shall not make any loans or advances to any third party and has not acquired, and will not acquire, obligations or securities of its partners, members or shareholders;

(viii) has been and expects to remain solvent and pay its own liabilities, Indebtedness and obligations of any kind, including all administrative expenses, as the same shall become due; has paid its own liabilities from its own separate assets, and except to the extent its Indebtedness may be paid from the proceeds of the Loan or from the proceeds of the sales of Units in accordance with the Loan Documents, it shall pay all such liabilities, Indebtedness and obligations from its own separate assets;

(ix) has done or caused to be done and shall do all things necessary to preserve its existence, and shall not, nor will any member, partner or shareholder, amend, modify or otherwise change its articles of organization, certificate of formation, articles or certificate of incorporation, bylaws, partnership agreement, limited liability company agreement or operating agreement in a manner which adversely affects each such Person's existence as a single purpose entity;

(x) except for the Loan Accounts, which shall be maintained in accordance with the Loan Documents, has maintained and shall maintain bank accounts separate from any other Person;

(xi) has maintained and shall maintain separate books and records and shall prepare separate financial statements which, except to the extent required or permitted by GAAP, are not consolidated or combined with the financial statements of any other Person;

(xii) has not, and at all times shall not hold itself out to the public or any other Persons, as being other than, a legal entity separate and distinct from any other Person (including any Affiliate);

(xiii) has filed and shall file its own tax returns and has not permitted and shall not permit its financial results to be consolidated or combined with those of any other Person for financial reporting purposes [except to the extent that the financial results are, pursuant to the requirements of applicable law or GAAP required or permitted to be, and are, in fact, included in consolidated financial statements, provided such consolidated financial statements indicate that Borrower and Borrower Representative are separate legal entities with separate liabilities and assets] and has not permitted and shall not permit any of its funds to be distributed or loaned to any other Person;

(xiv) has been, currently is and expects to be at all times adequately capitalized for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

(xv) has not sought and shall not seek its dissolution or winding up, in whole or in part;

(xvi) has not commingled and shall not commingle its funds and assets with those of any other Person;

(xvii) has and shall maintain its assets in such manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xviii) has not and shall not hold itself out to be responsible for the debts or obligations of any other Person;

(xix) has not done and shall not do any act which would make it impossible to carry on its ordinary business;

(xx) has not possessed and shall not possess or assign the Mortgaged Property for other than a business purpose;

(xxi) has not sold, encumbered or otherwise disposed of, and shall not sell, encumber or otherwise dispose of, all or substantially all of the Mortgaged Property except as contemplated by the Loan Documents;

(xxii) has not held and shall not hold title to its assets other than in its own name;

(xxiii) has maintained and shall maintain its books, records, resolutions and agreements as official limited liability company records;

(xxiv) has observed and will continue to observe all, as applicable, corporate, limited partnership or limited liability company formalities;

(xxv) has not and will not fail to correct any known misunderstandings regarding its separate identity;

(xxvi) shall not amend in any material respect any provisions of its organizational documents without Lender's express written consent;

(xxvii) shall not, without the affirmative vote of all of its directors, institute proceedings for itself to be adjudicated bankrupt or insolvent; consent to the institution of a bankruptcy or insolvency proceedings against it; file a petition seeking, or consent to, reorganization or relief under any applicable federal or state law relating to bankruptcy; consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official), of a substantial part of its property; make any assignment for the benefit of creditors; or admit in writing its inability to pay its debts generally as they become due;

(xxviii) shall not, without the affirmative vote of all of its directors, (i) liquidate or dissolve in whole or in part; (ii) consolidate, merge or enter into any form of consolidation with or into any other Person, or convey, transfer or lease its assets substantially as an entirety to any Person (except as contemplated by the Loan Documents) or permit any Person to consolidate, merge or enter into any form of consolidation with or into it; or (iii) amend any provisions of its organizational documents containing provisions similar to those contained in this Article VIII;

(xxix). has kept and shall keep its assets separately identified, maintained and segregated (this restriction requires, among other things, that entity funds shall not be commingled with those of any Affiliate or any other Person, that no funds of a Borrower will be distributed or loaned to any Person except for returns of capital or distributions which are properly authorized by requisite partnership, corporate or limited liability company action and reflected in the books and records of all applicable parties) and has maintained and shall maintain all accounts in its own name and with its own tax identification number, separate from those of any Affiliates or any other Person;

(xxx) has not and shall not take any action if, as a result of such action, it would have been or would be required to register as an investment company under the Investment Company Act of 1940, as amended;

(xxxi) has allocated and will allocate fairly and reasonably shared expenses, including shared office space and has used and will continue to use separate stationery, invoices and checks;

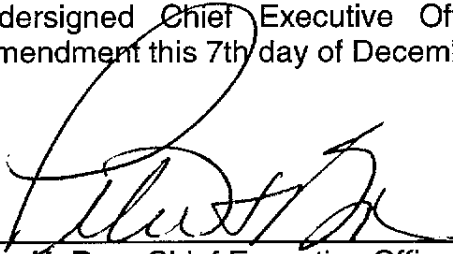
(xxxii) does not have and will not have any obligation to indemnify its partners, members, managers, directors, officers, representatives or shareholders or if it has such an obligation, such obligation is fully subordinated to the Obligations and such indemnifications obligations will not constitute a claim against such Person if cash flow in excess of the Obligations is not sufficient to satisfy such indemnification obligations; and

(xxxiii) shall consider the interests of its creditors in connection with all corporate actions of such Person.

The foregoing amendment was adopted by the Stockholders and Directors of the corporation on the 7th day of December, 2005. The only voting group entitled to vote on the adoption of the Amendment consists of the holders of the corporation's common stock. The number of votes cast by such voting group was sufficient for approval by that voting group.

(Signature Page Follows)

IN WITNESS WHEREOF, the undersigned Chief Executive Officer of this corporation has executed these Articles of Amendment this 7th day of December, 2005.



Peter H. Bos, Chief Executive Officer