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Transeastern Properties, Inc.

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ARTICLES OF AMENDMENT OF ARTICLES OF INCORPORATION

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of

97 NOV -3 PM 4:00

TRANSEASTERN PROPERTIES, INC.**Eliminating Series A Redeemable Preferred Stock**
and
Redesignating Series B Redeemable Preferred Stock

I. The undersigned, being the President of Transeastern Properties, Inc., a Florida corporation (the "Corporation"), does hereby file these Articles of Amendment to the Corporation's Amended and Restated Articles of Incorporation pursuant to Sections 607.1006 and 607.0602 of the Florida Business Corporation Act.

II. Pursuant to resolutions duly adopted by the Board of Directors of the Corporation as of July 17, 1997, but effective as of October 8, 1996, two series of Preferred Stock were designated from the authorized shares of Preferred Stock referred to in Sections 3.1 and 3.2 of the Articles of Incorporation of the Corporation, namely: (1) One Thousand Eight Hundred Nineteen (1,819) shares of Series A Redeemable Preferred Stock, par value \$.01 per share (the "Series A Preferred"), and (2) Thirty-Three Thousand Two Hundred Two (33,202) shares of Series B Redeemable Preferred Stock, par value \$.01 per share (the "Series B Preferred"). The relative rights, privileges, preferences, and limitations of the Series A Preferred and the Series B Preferred are as follows:

Series A Redeemable Preferred Stock and Series B Redeemable Preferred Stock

Preliminary Statement: On October 30, 1997, the Corporation redeemed all of the issued and outstanding shares of Series A Preferred, and, pursuant to the terms of the Series A Preferred, such shares of Series A Preferred were canceled, retired and eliminated from the shares which the Corporation is authorized to issue. The Corporation desires to eliminate the relative rights, privileges, preferences and limitations of the Series A Preferred from its Articles of Incorporation, as amended, and also desires effect certain amendments to the relative rights, privileges, preferences and limitations of the Series B Preferred.

Section A. Elimination of Series A Preferred. Effective as of October 30, 1997, the Series A Preferred is eliminated from the shares which the Corporation is authorized to issue. All references to the "Series Preferred Stock" in the Articles of Incorporation of the Corporation or any amendment thereto shall from such date forward be deemed to include only the Series B Preferred.

Section B. Dividends. Holders of Series Preferred Stock shall be entitled to dividends as follows:

1. **Quarterly Dividends.** Each holder of Series Preferred Stock shall be entitled to receive, as and when declared by the Board of Directors out of funds legally available therefor, dividends at the rate of \$12.00 per share per annum ("Preferred Dividends"), from the Original Issue Date (as hereinafter defined) through the first to occur of (i) redemption (as described in Section D hereof) or (ii) the date Preferred Liquidation Payments (as defined in Section B1 hereof) are set aside for holders of the Series Preferred Stock, prior and in preference to any dividends payable on or with respect to any other class or series of capital stock of the Corporation now or hereafter authorized. Dividends shall be payable to the

holders of Series Preferred Stock quarterly on each April 1, July 1, October 1, and January 1 (individually, a "Quarterly Preferred Dividend Payment Date" and collectively, the "Quarterly Preferred Dividend Payment Dates") as long as any shares of Series Preferred Stock are outstanding, to holders of record of Series Preferred Stock on a date, to be fixed by the Board of Directors, not exceeding 40 days preceding each Quarterly Preferred Dividend Payment Date. The first Quarterly Preferred Dividend Payment Date for Series B Preferred was January 1, 1995, and the Preferred Dividends payable per share were prorated based on the number of days such shares were outstanding on January 1, 1995. As more particularly described in Sections B2 and B3, hereof, Preferred Dividends in an amount of \$3.00 per share per quarter (the "Quarterly Preferred Dividend Amount") shall be paid on each Quarterly Preferred Dividend Payment Date in cash. The Original Issue Date of Series B Preferred was November 30, 1994. Notwithstanding the foregoing, no Preferred Dividends shall be payable in cash with respect to any quarterly dividend periods for which, and to the extent that, the Corporation, prior to October 8, 1996, issued "Preferred Dividends in Kind" (as such term is defined in the Articles of Incorporation of the Corporation in effect on October 7, 1996) in lieu of making Preferred Dividend payments in cash in respect of such periods.

2. **Cash Dividends.** On each Quarterly Preferred Dividend Payment Date for the Series B Preferred, Preferred Dividends shall only be paid in cash, in an amount per share equal to the Quarterly Preferred Dividend Amount.

3. **Payment of Dividends.** Preferred Dividends shall be paid by check delivered to the address of the holder of record as such holder's address appears in the Corporation's register of Series Preferred Stockholders.

4. **Cumulative Dividends; Effect of Non-Payment.** All Preferred Dividends payable on the Series Preferred Stock are cumulative, and to the extent Preferred Cash Dividends are not paid in full on any Quarterly Preferred Dividend Payment Date, such accumulated and unpaid Preferred Dividends shall be paid when funds are legally available therefor, and in any event upon liquidation of the Corporation as set forth in Section C hereof, or upon redemption of the Series Preferred Stock by the Corporation as set forth in Section E hereof. Notwithstanding anything to the contrary contained herein or in any prior amendment of the Articles of Incorporation of the Corporation, the accumulation of the Preferred Dividends and, subject to the provisions of Sections B6, B7 and B8 hereof, the right of the holders of Series Preferred Stock to the payment of accumulated and unpaid Preferred Dividends upon such liquidation or redemption shall be the only rights of such holders with respect to such payment, and such holder shall not have the right to compel the payment of such dividends prior to such liquidation or redemption.

5. **Restrictions.** No dividends shall be declared or paid by the Corporation on Common Stock or any other class or series of Preferred Stock hereafter created, unless (i) all accumulated and unpaid Preferred Dividends are simultaneously paid on all Series Preferred Stock entitled to Preferred Dividends, and (ii) any partial payment of then accumulated and unpaid Preferred Dividends to holders of Series Preferred Stock is made ratably in proportion to the full amount of accumulated and unpaid Preferred Dividends to which each such holder is then entitled.

6. **Series B Dividend Preference.** No Dividends shall be declared or paid by the Corporation on Common Stock or any other class or series of Preferred Stock hereafter

created, *unless* all accumulated and unpaid Preferred Dividends on Series B Preferred are simultaneously paid on all shares of Series B Preferred entitled to Preferred Dividends.

Section C. Liquidation. Upon any Liquidation (as hereinafter defined), Series Preferred Stock shall be entitled to liquidation payments as follows:

1. **Amount.** Each holder of Series Preferred Stock is entitled to a liquidation payment in an amount equal to \$100.00 per share of Series Preferred Stock, *plus* an amount equal to all Preferred Dividends unpaid thereon computed from the Original Issue Date to the date the Preferred Liquidation Payment (as defined below) is tendered, *plus* any other dividends declared on Series Preferred Stock but unpaid thereon (the amount payable with respect to a share of Series Preferred Stock pursuant to this Section C1 is hereinafter referred to as a "Preferred Liquidation Payment" and with respect to all shares of Series Preferred Stock as the "Preferred Liquidation Payments").

2. **Series B Liquidation Preference.** The Series B Preferred shall rank junior to the Corporation's Series C Convertible Preferred Stock and Series D Convertible Preferred Stock and shall rank senior to the Common Stock and any other series of Preferred Stock hereafter created in respect of any payments upon a Liquidation. If upon a Liquidation, the assets or surplus funds to be distributed among the holders of Series Preferred Stock after distribution of all payments due to the holders of the Series C and Series D Preferred Stock upon Liquidation shall be insufficient to permit payment to the holders of Series B Preferred of the full amounts of their Series B Preferred Liquidation Payments, then such assets or surplus funds of the Corporation to be so distributed shall be distributed ratably among the holders of Series B Preferred then outstanding in proportion to the full amount of the Series B Preferred Liquidation Payments due to all holders of Series B Preferred.

3. **Liquidation Payments on Common Stock.** After the holders of Series Preferred Stock have been paid in full their Preferred Liquidation Payments, the remaining net assets of the Corporation may be distributed to the holders of the Common Stock or any other class or Series of Preferred Stock hereafter created.

4. **Procedures for Payment of Liquidation Payments.** Written notice of such Liquidation, stating a payment date, the amount of the Preferred Liquidation Payments, and the place where said Preferred Liquidation Payments shall be payable, shall be given by mail, postage prepaid not less than ten (10) days prior to the payment date stated therein, to the holders of record of Series Preferred Stock, such notice to be addressed to each such holder at its address as shown by the records of the Corporation.

5. **Definition.** As used herein, a "Liquidation" is any consolidation, share exchange, or merger of the Corporation into or with any other entity or entities in which the Corporation is not the surviving corporation; any sale, lease, exchange, or transfer by the Corporation of all or substantially all of its assets; or any change of control of the Corporation such that Arthur J. Falcone, Edward W. Falcone and Philip Cucci, Jr. (the "Founders") and their Affiliates (as hereinafter defined) or Associates (as hereinafter defined) collectively cease to beneficially own a majority of the shares of Common Stock of the Corporation. As used in the preceding sentence, "Affiliate" shall mean a person who directly or indirectly controls, is controlled by, or is under common control with the Founders or any of them. "Associate" shall mean the spouse, parent, child, sibling, mother- and father-in-law, son- and daughter-in-law, or brother- and sister-in-law of a Founder.

Section D. Voting Rights.

1. **Voting Rights.** Except as otherwise provided by the Florida Business Corporation Act or as otherwise provided herein, holders of Series Preferred Stock shall vote together with holders of Common Stock as a single class on all actions to be taken by the shareholders of the Corporation. Each share of Series Preferred Stock shall entitle the holder thereof to Eight and Two-Tenths (8.2) votes per share on all actions on which such share is entitled to vote with the holders of Common Stock as a single class.

2. **Notices of Shareholders Meetings.** Holders of the shares of Series Preferred Stock shall be entitled to receive notice of all meetings of shareholders of the Corporation, not less than ten (10) nor more than thirty (30) days prior to any meeting of shareholders of the Corporation at which shareholder action is to be taken.

Section E. Redemption. The Series Preferred Stock shall be redeemed as follows:

1. **Redemption Upon Public Offering; Conversion.** Each share of Series Preferred Stock which remains outstanding on the closing date of a public offering pursuant to a registration statement filed with the Securities Exchange Commission (the "Registration Date"), in which the Corporation completes the sale of its Common Stock for an aggregate purchase price in excess of Ten Million Dollars (\$10,000,000), shall automatically, and without any action on the part of the holder thereof or the Corporation except as provided in clause (i) below, be converted into solely the right to receive, upon surrender thereof as hereinafter provided, an amount equal to \$100, plus an amount equal to all Preferred Dividends unpaid thereon computed from the Original Issue Date for such Series to the Registration Date, plus any other dividends declared but unpaid thereon. The Corporation shall have no obligation to deliver to any holder of such converted Series Preferred Stock the funds to which the holder shall be entitled until such holder has surrendered the certificate or certificates for the shares of Series Preferred Stock held by such holder, duly endorsed, at the office of the Corporation or any transfer agent for the Series Preferred Stock or the holder notifies the Corporation that such certificates have been lost, stolen, or destroyed, and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection therewith. All rights with respect to such shares of converted Series Preferred Stock outstanding on the Registration Date shall forthwith after the Registration Date terminate, except for the rights of the holders of such shares (i) to receive the funds stated herein upon surrender of their certificates for the Series Preferred Stock and (ii) with respect to accumulated unpaid Preferred Dividends described in Section B5 hereof.

2. **Redemption at Maturity.** Each share of Series B Preferred which remains outstanding on December 31, 2004 (the "Series B Maturity Date") shall be redeemed by the Corporation for an amount equal to \$100 per share of Series Preferred Stock, plus an amount equal to all Preferred Dividends unpaid thereon computed from the Original Issue Date to the Series B Maturity Date, plus any other dividends declared but unpaid thereon (the "Redemption Amount"). The Corporation shall have no obligation to deliver to any holder of Series Preferred Stock the Redemption Amount to which the holder shall be entitled until the holder has surrendered the certificate or certificates for the shares of Series Preferred Stock held by such holder, duly endorsed, at the office of the Corporation or any transfer agent for the Series Preferred Stock, or the holder notifies the Corporation that such certificates have been lost, stolen, or destroyed, and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection

therewith. All rights with respect to shares of Series Preferred Stock outstanding on the Series B Maturity Date shall forthwith after the Series B Maturity Date terminate, except for the rights of the holders of such shares (i) to receive the Redemption Amount upon surrender of their certificates for the Series Preferred Stock and (ii) with respect to accumulated unpaid Preferred Dividends described in Section B5 hereof.

3. Right of Corporation to Call Shares for Redemption. Commencing on the Original Issue Date, the Corporation shall have the right to call for redemption all or any part of the outstanding Series Preferred Stock (the "Called Shares"), at any time or from time to time, at a price equal to \$100.00 for each Called Share, plus an amount equal to all Preferred Dividends unpaid thereon computed from the Original Issue Date to the date such payment is made to holders of the Called Shares, plus any other dividends declared but unpaid thereon. The amount payable with respect to each Called Share is hereinafter referred to as the "Call Price". Written notice of the Corporation's election to purchase all or part of the then outstanding Series Preferred Stock stating a payment date, the amount of the Call Price, the number of Called Shares, and the place where the Call Price shall be payable, shall be given by mail, postage prepaid, not less than thirty (30) days prior to the payment date stated therein, to the holders of record of all shares of Series Preferred Stock called for redemption, such notice to be addressed to each such holder at its address as shown by the records of the Corporation. Each redemption of Called Shares shall be made ratably among the holders of Series Preferred Stock then outstanding so that the number of Shares redeemed from each such holder shall bear the same ratio to the total number of Called Shares redeemed from all such holders as the number of shares of Series Preferred Stock then held by such holders bears to the aggregate number of shares of Series Preferred Stock then outstanding. From and after the close of business on the payment date, unless there is a default in the payment of the Call Price, all rights of the holders (except the right to receive the Call Price) shall cease with respect to the Called Shares, any Preferred Dividends shall cease to accrue and such shares shall not thereafter be transferred on the books of the Corporation or be deemed to be outstanding for any purpose whatsoever.

4. Redeemed or Otherwise Acquired Shares. Any Series Preferred Stock redeemed pursuant to this Section E4 or otherwise acquired by the Corporation in any manner whatsoever shall be canceled and shall not under any circumstance be reissued, and the Corporation may from time to time take such appropriate corporate action as may be necessary to reduce accordingly the number of authorized shares of Series Preferred Stock.

Section F. Notices. In the event of (i) any taking by the Corporation of a record of the holders of any class or series of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, (ii) any reclassification or recapitalization of the capital stock of the Corporation, (iii) any merger or consolidation of the Corporation, or any transfer of all or substantially all the assets of the Corporation to any other corporation, entity or person, or (iv) any voluntary or involuntary dissolution, liquidation, or winding up of the affairs of the Corporation, the Corporation shall mail to each holder of Series Preferred Stock at least thirty (30) days prior to the record date specified therein, a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation or winding up is expected to become effective, and (C) the time, if any is to be fixed, as to when the holders of record of Common Stock or other securities shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such reorganization, reclassification, transfer, consolidation, merger, dissolution, liquidation, or winding up. Any notice required by the provisions

of this Section F to be given to the holder of shares of the Series Preferred Stock shall be deemed given when personally delivered to such holder or five (5) business days after the same has been deposited in the United States mail, certified or registered mail, return receipt requested, postage prepaid, and addressed to each holder of record at his address appearing on the books of the Corporation.

Section G. Payment of Taxes. The Corporation will pay all documentary, stamp and similar taxes and governmental charges imposed upon the transfer of the Series Preferred Stock that may be imposed upon the issuance or redemption of shares of the Series Preferred Stock.

Section H. No Dilution or Impairment. The Corporation shall not amend its Articles of Incorporation or participate in any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, which has the effect of avoiding the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, and will at all times in good faith assist in carrying out all such action as may be reasonably necessary or appropriate in order to protect the rights of the holders of the Series Preferred Stock against dilution or other impairment thereof.

Section I. Restrictions and Limitations. So long as any shares of Series Preferred Stock remain outstanding, the Corporation shall not, and shall not permit any subsidiary to, without the vote or written consent by the holders of at least two-thirds (or such lesser voting requirement as may be specified below) of the outstanding Series Preferred Stock, in each such case voting or consenting as a separate series:

1. **Redemption of Equity Securities.** Purchase, redeem, or otherwise acquire (or pay into or set aside for a sinking fund for such purpose), any of the Common Stock or any other shares of its capital stock of any class or any warrants, rights, or options to purchase or acquire any shares of its capital stock except for redemption as provided for herein; provided, however, that this restriction shall not apply to the repurchase of (i) shares of Common Stock from employees, officers, directors, consultants, or other persons performing services for the Corporation or any subsidiary of the Corporation pursuant to agreements under which the Corporation has the option or obligation to repurchase such shares upon the occurrence of certain events as set forth in that certain Shareholders Agreement among the Corporation, holders of Series A Preferred, and the Founders dated June 2, 1993, such as the termination of employment, or (ii) warrants to purchase Common Stock to be issued to The Morgan Stanley Real Estate Fund II, L.P. and representing, at all times until the completion of an initial public offering by the Corporation, five percent (5%) of the fully diluted Common Stock.

2. **Increase Authorized Preferred.** Increase the total number of authorized shares of Series B Preferred; or

3. **Amend Series Preferred Stock.** Following the date of issue of any shares of Series Preferred Stock, amend, modify, or supersede the terms of the Series Preferred Stock without the affirmative vote or consent of holders of a majority of each series of the then outstanding shares of Series Preferred Stock, voting or consenting as a separate series.

Section J. No Reissuance of Series Preferred Stock. No share or shares of Series Preferred Stock acquired by the Corporation by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be canceled, retired, and eliminated from the shares which the Corporation shall be authorized to issue.

The foregoing amendment was adopted by the Board of Directors as of October 31 1997 and by the holders of the Series B Preferred as of October 31, 1997. In each case, the number of votes was sufficient for approval.

IN WITNESS WHEREOF, the undersigned President of the Corporation has executed these Articles of Amendment on October ~~29~~, 1997.

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TRANSEASTERN PROPERTIES, INC.

By: _____

Les Campbell
Les Campbell, Chief Financial Officer