

Document Number Only

CT CORPORATION SYSTEM

660 EAST JEFFERSON STREET

Requestor's Name

TALLAHASSEE, FL 32301

Address

222-1092

City

State

Zip

Phone

CORPORATION(S) NAME

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000002307890--D

PBG Associates Ltd.

09/30/97--01064--007

****148.75 ****148.75

☐ Profit

☐ NonProfit

☐ Limited Liability Co.

☐ Foreign

☐ Amendment

☐ Merger

☐ Dissolution/Withdrawal

☐ Mark

☒ Limited Partnership

☐ Reinstatement

☐ Annual Report

☐ Reservation

☐ Other

☐ Change of R.A.

☐ Fictitious Name Filing

☒ Certified Copy

☐ Photo Copies

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☐ 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

9/24
a. TAX

FILING

R. AGENT FEE

C. CUR

TOTAL

N. BAL

BALANCE DUE

RECEIVED

52.50

35.00

61.25

748.75

RECEIVED
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CORPORATION
B/K File 2nd
9/26/97

**CERTIFICATE OF LIMITED PARTNERSHIP
OF
PBG Associates Ltd.**

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97 SEP 26 PM 2:42

The undersigned, desiring to form a limited partnership pursuant to Section 620.108 of the Florida Revised Uniform Limited Partnership Act, does hereby certify:

1. The name of the partnership is PBG Associates Ltd.
2. The mailing address of the partnership is c/o Titan Management L.P., 53 Forest Avenue, 2nd Floor, Old Greenwich, Connecticut 06870.

The partnership shall maintain the records required by Section 620.106 at such office.

3. The name and address of the partnership's agent for service of process is CT Corporation System, 1200 South Pine Island Road, Plantation, Florida 33324.

4. The name and the business address of the general partner is: PBG Associates L.C., c/o Titan Management L.P., 53 Forest Avenue, 2nd Floor, Old Greenwich, Connecticut 06870.

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5. The latest date upon which the partnership is to dissolve is December 31, 2047.

6. An affidavit declaring the amount of the capital contributions of the limited partners and the amount anticipated to be contributed by the limited partners is attached as Exhibit A.

7. The sole purpose of the partnership is to acquire, own, hold, maintain, manage, operate, improve, develop, finance, pledge, encumber, sell, exchange, lease, dispose of and otherwise deal with the property described on attached Exhibit B (the "Property"), together with such other activities as may be necessary or advisable in connection with the ownership of the Property. The partnership shall not engage in any business unrelated to the ownership and operation of the Property and shall not own any assets other than those related to the Property or otherwise in furtherance of the purposes of the partnership. The partnership shall not incur any indebtedness other than the indebtedness related to the Property and otherwise provided herein. The partnership shall maintain its own separate books, records and accounts.

8. Notwithstanding any other provision in this Certificate or the partnership agreement of the partnership (the "Partnership Agreement") or applicable law to the contrary, until such time as all obligations of the partnership secured by the mortgage/deed of trust (the "Mortgage") relating to the loan (the "Loan") originated by Column Financial, Inc., including its successors and assigns (the "Lender"), and all other loan documents (the

"Loan Documents") have been indefeasibly paid in accordance with their terms and otherwise fully discharged, neither the partnership nor any partner shall take any action to do any of the following:

- (i) to elect any additional or substitute general partner; or
- (ii) any act which would constitute an "Event of Default" or a "default" under the Mortgage or any of the other Loan Documents (as defined in the Mortgage) evidencing or securing the obligations secured by the Mortgage.

9. Notwithstanding anything in this Certificate, the Partnership Agreement or applicable law to the contrary, any obligation of the partnership to indemnify any partner herein shall be fully subordinated to the Loan and the rated obligations issued in connection with a securitization of the Loan, and shall not constitute a claim against the partnership or its assets until such time as all obligations of the partnership secured by the Loan and all the Loan Documents have been indefeasibly paid in accordance with their terms and otherwise fully discharged and the rated obligations are no longer outstanding.

10. Upon dissolution of the partnership, or upon an Event of Default or a default under the Mortgage or under any of the other Loan Documents, the trustee appointed in connection with the securitization shall have the independent ability to retain all collateral secured by the Mortgage and other Loan Documents and continue to pay scheduled debt service, or to liquidate the collateral in the event the proceeds would be insufficient to repay all amounts due to holders of the Loan.

11. Notwithstanding any other provision of this Certificate, the Partnership Agreement or any provision of law that empowers the partnership, until such time as all obligations of the partnership under the Mortgage and other Loan Documents have been fully and indefeasibly paid and discharged, without the express written unanimous consent of all the partners, the partnership shall not take any of the following actions:

- (i) amend, alter, change or repeal this Certificate or the Partnership Agreement;
- (ii) dissolve or liquidate, in whole or in part, consolidate or merge with or into any other entity or convey, sell or transfer the partnership's properties or assets substantially as an entirety to any entity, except as otherwise may be permitted under the Mortgage or under any of the other Loan Documents;
- (iii) incur any indebtedness or assume or guarantee any indebtedness of any other entity or person, or engage in any other business or activity other than as set forth herein; or

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DIVISION OF CORPORATIONS
97 SEP 29 PM 2:42

(iv) file a voluntary petition or otherwise initiate proceedings to be adjudicated bankrupt or insolvent or seek an order for relief as a debtor under the United States Bankruptcy Code, as amended (11 U.S.C. § 101, et seq.), or file or cause the filing of, or consent to, or acquiesce in, any petition seeking any composition, reorganization, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy laws or any other present or future applicable federal, state or other statute or law relative to bankruptcy, insolvency or other relief for debtors; or seek, or consent to, or acquiesce in, the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the partnership or any substantial part of the properties and assets of the partnership, or make, or cause to be made, any general assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or declare or effect a moratorium on its debt or take any partnership action in furtherance of any such action.

12. When voting in matters set forth in Section 11 above, the partners shall take into account the interests of the partnership's creditors, including without limitation, the Lender, regardless of whether the partnership is then insolvent on either a balance sheet basis or equitable basis.

13. Any partner loans or advances shall be subordinate to the Loan and shall not constitute a claim against the partnership until all obligations of the partnership under the Loan have been indefeasibly paid and discharged.

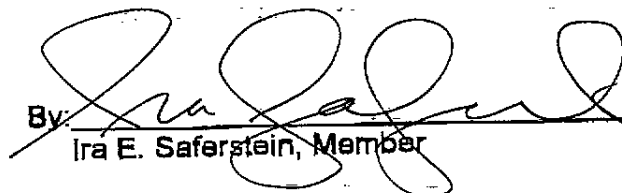
14. The partnership shall at all time (i) observe all partnership formalities, including the maintenance of current minute books; (ii) maintain, separate from any other person, its own separate and distinct books of account, bank accounts and partnership records; (iii) maintain separate financial statements and cause its financial statements to be prepared and maintained in accordance with generally accepted accounting principles in a manner that indicates the separate existence of the partnership and its assets and liabilities; (iv) pay all its liabilities out of its own funds (including the salaries of its own employees) and allocate fairly and reasonably any overhead for shared office space, (v) maintain and use its own separate stationary, invoices and checks; (vi) in all dealings with the public identify itself and conduct its own business under its own name as a separate and distinct legal entity; (vii) maintain an arm's-length relationship with its affiliates; and (viii) independently make decisions with respect to its business and daily operations. The partnership shall not (i) pledge its assets for the benefit of any other person, (ii) commingle its assets with those of any other person, (iii) assume or guarantee the liabilities or obligations of any other person or otherwise hold out its credit as being available or able to satisfy the liabilities or obligations of any other person, (iv) acquire obligations or securities of, or make loans or advances to, any affiliate of the partnership, or (v) incur any indebtedness, liabilities or obligations relating to the operation of the Property, other than trade debt incurred in the ordinary course of business, except as otherwise required by the Lender in connection with the Loan.

15. Each general partner of the partnership shall have the provisions of Section 4 of the attached Exhibit C contained in their respective Articles of Incorporation of Organization.

16. Neither Allen Yudell, Jane Yudell, Jerold Kaniuk nor Lois Kaniuk, or any person or entity related to or affiliated with any of the foregoing, directly or indirectly, shall (i) have the right to participate in the management or operation of the Property or the Partnership, directly or indirectly, or (ii) own any interest, directly or indirectly, in the Partnership or any general partner or limited partner of the Partnership, or in any entity in any way related to or affiliated with, directly or indirectly, any of the foregoing.* Notwithstanding the foregoing, Jane Yudell (or an entity wholly-owned by her) shall be permitted to own a minority limited partnership interest in the Partnership.

PBG Associates Ltd.

By: PBG Associates L.C., General Partner

By: 
Ira E. Saferstein, Member

Having been named to accept service of process for PBG Associates Ltd. at the place designated in this Certificate, I hereby agree to act in this capacity, and I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties.

Date: 9/26/97

CT Corporation System

By: Connie Bryce
Special Assistant Secretary

* or (iii) be a director, officer, employee or creditor of the Partnership, any partners of the Partnership or manager of the Partnership's property.



EXHIBIT A

AFFIDAVIT

The undersigned, as General Partner of PBG Associates Ltd., a Florida limited partnership, hereby declares:

1. The amount of the capital contributions of the limited partners and the amount anticipated to be contributed by the limited partners are as follows:

Amount contributed by limited partners = \$100.00

Additional amount anticipated to be
contributed by limited partners = \$ -0-

Total \$100.00

2. This Affidavit is made pursuant to Section 602.108, Florida Statutes.

IN WITNESS WHEREOF, this Affidavit has been executed by the General Partner
this 24th day of September, 1997.

PBG Associates Ltd.

By: PBG Associates L.C., General Partner

By: 

Ira E. Safirstein, Member

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DIVISION OF CORPORATIONS
97 SEP 26 PM 2:42

EXHIBIT "B"

A parcel of land in a portion of the Southeast quarter of Section 1, Township 42 south, Range 42 East, City of Palm Beach Gardens, Palm Beach County, Florida, being more particularly described as follows:

To find the True Point of Beginning commence at the Southeast corner of Section aforesaid, said corner being in the centerline of Right-of-Way of Monet Road as now laid out and in use, thence North $88^{\circ}10'56''$ West (all bearings are relative to Florida State Road Department Right-of-Way Map of S.R. No. 9) along the South line of Section 1 and centerline of Monet Road a distance of 256.96 feet to a point; thence North $10^{\circ}12'12''$ West, a distance of 316.94 feet to a point in the Westerly Right-of-Way line of access road as now laid out and in use as shown on said Right-of-Way Map of State Road No. 9 and the TRUE POINT OF BEGINNING of the herein described parcel; thence continue North $10^{\circ}12'12''$ West along said Westerly Right-of-Way line, a distance of 419.24 feet to a point; thence South $68^{\circ}31'34''$ West, a distance of 168.99 feet to a point; thence North $24^{\circ}24'01''$ West, a distance of 400.00 feet to a point; thence North $40^{\circ}22'42''$ East, a distance of 200.00 feet to a point on the Westerly Right-of-Way line of aforementioned access road as now laid out and in use as shown on said Right-of-Way Map of State Road No. 9, said Point also being on a curve concave to the Southwest, whose radial line bears South $51^{\circ}20'29''$ West, having a partial central angle of $04^{\circ}29'06''$ and a radius of 904.93 feet; thence Northwesterly along the arc of said curve and said Westerly Right-of-Way line, an arc distance of 70.84 feet to a point on said curve; thence South $40^{\circ}22'42''$ West, a distance of 165.93 feet to a point; thence north $49^{\circ}37'18''$ West, a distance of 200.00 feet to a point on the Southeasterly Right-of-Way line of P.G.A. Boulevard as now laid out and in use; thence South $40^{\circ}22'42''$ West along said Southeasterly Right-of-Way line, a distance of 310 feet to a point; thence South $35^{\circ}39'48''$ West, a distance of 304.16 feet to a point on the Easterly Right-of-Way line of State Road No. 9; thence South $07^{\circ}55'38''$ West along said Easterly Right-of-Way line, a distance of 79.27 feet to a point; thence South $24^{\circ}24'01''$ East along said Easterly Right-of-Way, a distance of 369.57 feet to a point; thence South $88^{\circ}10'56''$ East a distance of 810.26 feet to the POINT OF BEGINNING.

Less and except for that parcel of land described on attached Exhibit "B-1".

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DIVISION OF CORPORATIONS
SEP 26 PM 2:42

EXHIBIT "B-1"

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DIVISION OF CORPORATIONS
97 SEP 26 PM 2:42

A PARCEL OF LAND IN A PORTION OF THE SOUTHEAST QUARTER OF SECTION 1, TO TOWNSHIP 42 SOUTH, RANGE 42 EAST, CITY OF PALM BEACH GARDENS, PALM BEACH COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TO FIND THE TRUE POINT OF BEGINNING COMMENCE AT THE SOUTHEAST CORNER OF SECTION AFORESAID, SIAD CORNER BEING IN THE CENTERLINE OF RIGHT-OF-WAY OF MONET ROAD AS NOW LAID OUT AND IN USE, THENCE NORTH 88° 10' 56" (ALL BEARINGS ARE RELATIVE TO FLORIDA STATE ROAD DEPARTMENT RIGHT-OF-WAY MAP OF OF S.R. NO. 9), ALONG THE SOUTH LINE OF SECTION 1 AND CENTERLINE OF MONET ROAD A DISTANCE OF 256.96 FEET TO A POINT; THENCE NORTH 10° 12' 12" WEST, A DISTANCE OF 316.94 FEET TO A POINT IN THE WESTERLY RIGHT-OF-WAY LINE OF ACCESS ROAD AS NOW LAID OUT AND IN USE AS SHOWN ON SAID RIGHT-OF-WAY MAP OF STATE ROAD NO. 9; THENCE CONTINUE NORTH 10° 12' 12" WEST ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 419.24 FEET TO A POINT; THENCE SOUTH 68° 31' 34" WEST, A DISTANCE OF 168.99 FEET TO A POINT; THENCE NORTH 24° 24' 01" WEST, A DISTANCE OF 400.00 FEET TO A POINT; THENCE NORTH 40° 22' 42" EAST, A DISTANCE OF 200.00 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF AFOREMENTIONED ACCESS ROAD AS NOW LAID OUT AND IN USE AS SHOWN ON SAID RIGHT-OF-WAY MAP OF STATE ROAD NO. 9, SAID POINT ALSO BEING ON A CURVE CONCAVE TO THE SOUTHWEST, WHOSE RADIAL LINE BEARS SOUTH 51° 20' 29" WEST, HAVING A PARTIAL CENTRAL ANGLE OF 04° 29' 06" AND A RADIUS OF 904.93 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE AND SAID WESTERLY RIGHT-OF-WAY LINE, AN ARC DISTANCE OF 70.84 FEET TO A POINT ON SAID CURVE; THENCE SOUTH 40° 22' 42" WEST, A DISTANCE OF 165.93 FEET; TO THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL; THENCE NORTH 49° 37' 11" WEST, A DISTANCE OF 148.00 FEET TO A POINT; THENCE SOUTH 40° 22' 42" WEST, A DISTANCE OF 147.50 FEET TO A POINT; THENCE SOUTH 50° 34' 23" EAST, A DISTANCE OF 148.02 FEET TO A POINT, THENCE NORTH 40° 22' 42" EAST, A DISTANCE OF 145.04 FEET TO THE POINT OF BEGINNING..

CONTAINING 21647.589 SQUARE FEET OF 0.497 ACRES MORE OR LESS AND SUBJECT TO EASEMENTS, RESERVATIONS, AND/OR RIGHTS-OF-WAY OF RECORD.

EXHIBIT "C"

partnership or other document evidencing each such filing must also be delivered.

- (iii) Consents of Limited Partners. For existing Borrower limited partnerships, ^{see} consent of limited partners may be required to amend the partnership agreement to comply with the requirements set forth above and to enter into this loan transaction. **Obtaining the requisite consents of limited partners can be a time consuming process and, therefore, each Borrower must initiate this process immediately so as not to delay the closing of the loan.** In addition, copies of limited partner consents to any previous amendments to the partnership agreement must also be provided.

If the partnership agreement does not require the consent of limited partners to any partnership amendments required to participate in this loan program, or to enter into this loan transaction, the Borrower's counsel is required to opine that such consents are not necessary pursuant to such Borrower's operative documents.

- (iv) ^{order} Partnership Certificate of Good Standing. A current certificate of good standing must be delivered with respect to the state in which the Borrower partnership is formed. In addition, where the property owned by the Borrower is located in a state other than where the Borrower is formed, the Borrower must also deliver a current good standing certificate from that state or have its counsel opine that the Borrower is not required to qualify to transact business in such state. The Borrower should request good standing certificates as soon as possible.
- (v) If a limited partner in the Borrower is a partnership, the partnership agreement of that limited partner.
- (vi) ^{certif} The partnership agreement shall also require each general partner and, if applicable, their respective constituent general partners, to have the provisions set forth below in their Certificate of Incorporation.
- (vii) ^{*} Confirmation that CT Corporation (or other party) is Borrower's authorized agent for service of process.

4. Corporate General Partner. The general partner must be a corporation formed for the single purpose of acting as the general partner in the Borrower partnership and whose only substantial asset is its general partner interest. The general partner's organizational documents must also prohibit it from incurring any indebtedness other than trade debt. In addition, until the full balance of the Loan has been indefeasibly paid and the Mortgage discharged, the Board of Directors of the Corporation at all times shall include at least one "Independent Director," as defined herein. The

certificate and articles of incorporation of the general partner must, therefore, provide that:

- (a) The purpose for which the Corporation is organized is limited solely to acquiring, owning and holding the general partnership interest in the [Insert Name of Borrower] limited partnership ("Partnership") pursuant to the terms and conditions of the Borrower's Limited Partnership Agreement (the "Partnership Agreement"), and to transact any and all lawful business for which a corporation may be formed under the [General Corporation Law] of the State of _____, that is incident and necessary or appropriate to the Corporation's purposes.
- (b) Notwithstanding any other provision of these Articles of Incorporation or the By-Laws of the Corporation and any provision of law that otherwise so empowers the Corporation to the contrary, until such time as (i) all obligations of the Partnership secured by the mortgage in favor of Column Financial, Inc., its successors and assigns (the "Mortgage"), or under any of the other Loan Documents have been fully paid in accordance with their terms and fully discharged, or (ii) the Corporation is no longer the owner of the general partnership interest of the Partnership pursuant to the terms and conditions of the Partnership Agreement, the Corporation shall not, without the unanimous affirmative vote of all of the members of the Board of Directors (which Board of Directors shall include at least one "Independent Director" as defined in Article ____ hereof), do any of the following:
- (i) amend, alter, change or repeal the Articles of Incorporation of the General Partner or the Certificate of Limited Partnership or Partnership Agreement of the Borrower;
 - (ii) dissolve or liquidate, in whole or in part, consolidate or merge with or into any other entity or convey, sell or transfer its properties and assets substantially as an entirety to any entity, or cause the Corporation or the Partnership to dissolve, wind up or liquidate, in whole or in part, or cause the Corporation or the Partnership to consolidate or merge with or into any other entity or convey, sell or transfer its properties and assets substantially as an entirety to any entity, except as otherwise may be permitted under the Mortgage or under any of the other Loan Documents;
 - (iii) incur any indebtedness or assume or guaranty any indebtedness of any other entity or person, engage in any other business or activity other than as set forth in these Articles of Incorporation, or cause the Partnership to engage in any other business or activity other than as set

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DIVISION
97 SEP 26 PM 2:42

forth in the Certificate of Limited Partnership or Partnership Agreement (or any successor provisions thereto, however designated).

- (iv) sell, transfer, exchange, convey, encumber or otherwise dispose of (except as permitted by the Mortgage or any of the other Loan Documents) any or all of the Corporation's right, title or interest as the general partner of the Partnership;
- (v) file a voluntary petition or otherwise initiate proceedings to be adjudicated bankrupt or insolvent or seeking an order for relief as a debtor under the United States Bankruptcy Code, as amended (11 U.S.C. §§ 101 et seq.), or file or cause the filing of, or consent to, or acquiesce in any petition seeking any composition, reorganization, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy laws or any other present or future applicable federal, state or other statute or law relative to bankruptcy, insolvency or other relief for debtors, or seek, or consent to, or acquiesce in 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, or cause to be made, any general assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or declare or effect a moratorium on its debt or take any corporate action in furtherance of any such action;
- (vi) file, or cause the Corporation or the Partnership to file, a voluntary petition or otherwise initiate, or cause the Corporation or the Partnership to initiate, proceedings for the Corporation or the Partnership to be adjudicated bankrupt or insolvent or seeking an order for relief as a debtor under the United States Bankruptcy Code, as amended (11 U.S.C. §§ 101 et seq.), or file or cause the filing of, or cause the Corporation or the Partnership to file or cause the filing of, or consent to, or acquiesce in any petition seeking any composition, reorganization, readjustment, liquidation, dissolution, or similar relief for the Corporation or the Partnership under the present or any future federal bankruptcy laws or any other present or future applicable federal, state or other statute or law relative to bankruptcy, insolvency or other relief for debtors; or seek or cause the Corporation or the Partnership to seek, or consent, or acquiesce in the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Corporation or the Partnership, or of all or any substantial part of the properties and assets of the Corporation or the Partnership, or make, or cause the

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DIVISION OF CORPORATIONS
1997 SEP 26 PM 2:42

Corporation or the Partnership to make, any general assignment for the benefit of their respective creditors, or admit in writing their respective inability to pay their debts generally as they become due, or declare or effect a moratorium on their respective debts or take any partnership or corporate action in furtherance of any such action; or

(vii) withdraw as General Partner of the Partnership.

(c) Notwithstanding anything contained in these Articles of Incorporation or applicable law to the contrary, any obligation of the Corporation to indemnify its directors, officers, employees or agents shall be fully subordinated to the Loan and the rated obligations issued in connection with any securitization of the Loan and shall not constitute a claim against the Corporation or its assets until such time as all obligations of the Partnership under the Loan and secured by the Mortgage and all of the other Loan Documents have been fully paid in accordance with their terms and fully discharged and the rated obligations are no longer outstanding.

(d) The Corporation shall at all times (i) observe all corporate formalities, including the maintenance of current minute books, (ii) maintain, separate from any other person, its own separate and distinct books of account, bank accounts and corporate records, (iii) maintain separate financial statements and cause its financial statements to be prepared and maintained in accordance with generally accepted accounting principles in a manner that indicates the separate existence of the Corporation and its assets and liabilities, (iv) pay all its liabilities out of its own funds (including the salaries of its own employees) and allocate fairly and reasonably any overhead for shared office space, (v) maintain and use its own separate stationary, invoices and checks, (vi) in all dealings with the public identify itself and conduct its own business under its own name as a separate and distinct legal entity (vii) maintain an arm's-length relationship with its affiliates, and (viii) independently make decisions with respect to its business and daily operations. The Corporation shall not (i) pledge its assets for the benefit of any other person (ii) commingle its assets with those of any other person, (iii) assume or guarantee the liabilities or obligations of any other person or otherwise hold out its credit as being available or able to satisfy the liabilities or obligations of any other person, (iv) acquire obligations or securities of, or make loans or advances to, any affiliate of the Corporation, or (v) incur any indebtedness, liabilities or obligations relating to the operation of the Property, other than trade debt incurred in the ordinary course of business, except as otherwise required by the Lender in connection with the Loan.

(e) Until such time as the balance of the Mortgage Loan has been indefeasibly paid, the Board of Directors of the Corporation at all times shall include at

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
SEP 26 PM 2:42

least one independent director. The "Independent Director" shall be an individual who is (a) in fact independent, and (b) is not at the time of initial appointment and has not been at any time during the preceding five (5) years (i) a stockholder, officer or employee of the Borrower or General Partner, its ultimate parent or any subsidiaries or affiliates thereof, or of any affiliates of the Borrower, (ii) a customer, supplier or other person who derives more than ten percent (10%) of its purchases or revenues from activities with the General Partner, the Borrower, or any affiliate of either of them, (iii) a person or other entity controlling or under common control with any such stockholder, director, partner, customer, supplier or other person, or (iv) a member of the immediate family of any such director, stockholder, officer, employee, partner, customer, supplier or other person. As used herein, the term "affiliate" means any person controlling, under common control with, or controlled by the person in question, and the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract or otherwise. In the event that the Independent Director resigns, or such position is otherwise vacated, no action regarding the unanimous affirmative vote of the Board of Directors shall be taken unless and until such time as a successor Independent Director is elected and qualified and votes to approve such action. In the event of death, incapacity, resignation or removal of an Independent Director, or a vacancy for any other reason, a successor Independent Director shall promptly be appointed by the remaining directors. In addition, no Independent Director may be removed unless his or her successor has been elected and qualified.

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DIVISION OF CORPORATIONS
SEP 16 2:42 PM '97

- (f) When voting on matters subject to the vote of the Board of Directors, including the matters specified in paragraphs 4(a)-(e) hereof, notwithstanding that the General Partner is not then insolvent (on either a balance sheet or equitable basis), the Independent Director shall take into account the interests of the creditors of the Partnership and of the General Partner, as well as the interests of the Partnership and of the General Partner.

5. Copies of the following documents must be delivered by the corporate general partner to Lender's counsel and to the title companies for their review:

- (i) Certificate of Incorporation.
- (ii) Articles of Incorporation. The articles of incorporation must comply with the by-laws of the general partner. If the general partner is an existing corporation, amendments to the articles of incorporation satisfying the provisions set forth above must also be filed with the secretary of state or other appropriate state office in the state where