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FLORIDA PROFIT CORPORATION OR P.A.

TH APTS, INC.

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FAX AUDIT NO.:
H00000036582**ARTICLES OF INCORPORATION
OF
TH APTS, INC.****EFFECTIVE DATE**7-11-00

The undersigned, for the purpose of forming a corporation for profit under the laws of Florida, hereby adopts the following Articles of Incorporation:

**ARTICLE I
NAME**

The name of the Corporation is "TH Apts, Inc.," (the "Corporation")

**ARTICLE II
DURATION AND EXISTENCE**

The Corporation shall exist perpetually. The existence of the Corporation shall commence on the date these Articles of Incorporation shall be filed with the Florida Secretary of State or on a date specified herein, if said date is within 5 business days prior to the date of filing.

**ARTICLE III
NATURE OF BUSINESS****A. Purpose**

Notwithstanding any provision hereof to the contrary, the nature of the business and of the purposes to be conducted and promoted by the Corporation is to act as the general partner of TIMBER HOLLOW APTS, LTD. (the "Company") whose purpose is to acquire Timber Hollow Apartments in Houston, Texas, together with all improvements located thereon (the "Property"), and own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property. The Corporation shall exercise all powers enumerated in the Florida Business Corporations Act necessary or convenient to the conduct, promotion or attainment of the business of purposes except as otherwise set forth herein.

THIS INSTRUMENT PREPARED BY:

Edgar Lewis, Esq.
Gunster, Yoakley & Stewart, P.A.
2 South Biscayne Boulevard, Suite 3400
Miami, Florida 33131
Telephone (305) 376-6000

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(i) Notwithstanding any provision hereof to the contrary, if the indebtedness to LaSalle Bank National Association, formerly known as LaSalle National Bank as Trustee for the registered holders of DLS Mortgage Corp., Commercial Mortgage Pass-Through Certificates Series 1997-CF1, or its successors or assigns (the "First Mortgage Loan") owed by the Company is outstanding and the Deed of Trust securing same ("Deed of Trust") is not discharged of record, the Corporation shall not incur any indebtedness and shall not cause the Company to incur, assume or guarantee any indebtedness other than (a) the First Mortgage Loan; and (b) liabilities in the ordinary course of business relating to the ownership and operation of the Property.

(ii) If the First Mortgage Loan is outstanding and not discharged of record, the Corporation shall not and shall not cause the Company to: (1) dissolve or liquidate, or consolidate or merge with or into any other Person or convey or transfer its properties or the Company's properties substantially as an entirety to any Person; (2) voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors; or (3) amend its Articles of Incorporation or the Certificate of Limited Partnership or the Limited Partnership Agreement of the Company without first obtaining approval of the holder of the First Mortgage Loan.

(iii) If the First Mortgage Loan is outstanding and not discharged of record, the shares of capital stock of the corporation shall not be transferred, assigned, pledged, or otherwise disposed of or encumbered except as expressly provided for in the documents evidencing the First Mortgage Loan. A legend to such effect shall be placed on each certificate evidencing such shares.

(iv) So long as the First Mortgage Loan is outstanding and not discharged of record, the Corporation shall not: (a) enter into transactions with affiliates except on an arms length basis and on commercially reasonable terms; (b) transfer any direct or indirect interest in the Corporation unless such transfer is consented to by the holder of the First Mortgage Loan (the "Lender") if such consent or transfer is required by the documents evidencing or securing the First Mortgage Loan (collectively, the "Loan Documents"). Lender may condition its consent upon the delivery of an acceptable non-consolidation opinion to the holder of the First Mortgage Loan and to any applicable rating agency concerning, as applicable, the partnership, the new transferee and/or the respective owners.

(v) During the time that the First Mortgage Loan is outstanding and not discharged of record, the Corporation is required to continue serving in the capacity of General Partner for the Company.

(vi) Notwithstanding anything contained in this or any organizational documents to the contrary, any obligation which the Corporation may owe to any of its officers, directors, partners, members, shareholders or affiliates (collectively, "Interested Parties"), whether characterized as a loan, salary, a fee or indemnification, shall not constitute a claim against the Corporation until, and shall be subject to and fully subordinate to, the prior payment in full of the

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First Mortgage Loan, provided however, so long as no default or event of default exists under the Loan documents evidencing the First Mortgage Loan to the extent the Corporation has cash flow or other available liquid assets (exclusive of any of the reserve accounts required to be maintained under the loan documents) in excess of the amount necessary to make current payments of principal and interest due under the loan documents, the Corporation may pay when due (without any acceleration caused by the Corporation) the scheduled obligations due to the Interested Parties of the Corporation.

(vii) During the time the First Mortgage Loan is outstanding and not discharged of record, the Corporation shall have at least one (1) Independent Director as defined herein.

(viii) The unanimous consent of all of the Directors (including the consent of the Independent Director) is required for the Corporation to, and for the Corporation to cause the Company to:

(a) file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding;

(b) institute any proceedings under any applicable insolvency law or otherwise seek relief under any laws relating to the relief from debts or the protection of debtors generally;

(c) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Corporation or the Company or a substantial portion of either of their properties;

(d) make any assignment for the benefit of the creditors of the Corporation or the Company; or

(e) take any action in furtherance of any of the foregoing.

(ix) During the time the First Mortgage Loan is outstanding and not discharged of record, the Corporation is prohibited from amending the provisions specified in Articles III.A., III.B.(i)-(ix), Articles VII, VIII, IX, X and XI or without (i) confirmation from each of the applicable rating agencies that such amendment would not result in the qualification, withdrawal or downgrade of any securities rating, and (ii) approval of any such amendment by the holder of the First Mortgage Loan.

ARTICLE IV PRINCIPAL OFFICE AND MAILING ADDRESS

The principal office of the corporation and mailing address of the Corporation shall be c/o Robert E. Spielman, 9200 S. Dadeland Blvd., Suite 500, Miami, FL 33156.

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ARTICLE V
CAPITAL STOCK

(a) **AUTHORIZED SHARES.** The maximum number of shares of stock which the Corporation is authorized to issue and have outstanding at any one time is One Hundred (100) shares of common stock each having a par value of One Dollar (\$1.00).

(b) **PREEMPTIVE RIGHTS.** Shareholders shall have no preemptive rights.

(c) **CUMULATIVE VOTING.** Cumulative voting shall not be permitted.

ARTICLE VI
INITIAL REGISTERED AGENT AND OFFICE

The name of the initial registered agent of the Corporation is Robert E. Spielman. The street address of the initial registered office of the Corporation is 9200 S. Dadeland Blvd., Suite 500, Miami, FL 33156.

ARTICLE VII
DIRECTORS

(a) During the time that any indebtedness is owing under the First Mortgage Loan and it is not discharged of record, the Corporation shall have a minimum of three (3) directors, who shall be appointed by the Incorporator. One (1) director must be an Independent Director as hereafter defined. After the First Mortgage Loan is paid in full and discharged of record, the number of directors may be increased or decreased as provided in the by-laws. The names and addresses of the initial directors are:

(b) The Board of Directors is hereby specifically authorized to make provisions for reasonable compensation to its members for their services as directors, and to fix the basis and conditions upon which such compensation shall be paid. Any director of the Corporation may also serve the Corporation in any other capacity and receive compensation therefor in any form.

(c) Notwithstanding any provision hereof to the contrary, when voting on matters concerning the Company, notwithstanding that the Company is not then insolvent, the Corporation's directors, shall take into account the interests of the Company's creditors.

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ARTICLE VIII
INDEMNIFICATION

Notwithstanding any provision hereof to the contrary, any and all obligations of the Corporation to indemnify its directors and officers shall be fully subordinated to the First Mortgage Loan and, as long as the First Mortgage Loan is outstanding and not discharged of record, shall not constitute a claim against the Corporation.

ARTICLE IX
DEFINITIONS

For purpose of these Articles of Incorporation, the following terms shall have the following meanings:

"Affiliate" means any Person other than the Corporation (i) which owns beneficially, directly or indirectly through one or more intermediaries, more than ten percent (10%) of the outstanding shares of the Common Stock, or which is otherwise in control of the Corporation whether directly or indirectly through one or more intermediaries, (ii) of which more than ten percent (10%) of the outstanding voting securities are owned beneficially, directly or indirectly, by any Person described in clause (i) above, or (iii) which is controlled by or under common control with any Person described in clause (i) above; provided that for the purpose of this definition the terms "control" and "controlled by" shall have the meanings assigned to them in Rule 405 under the Securities Act of 1933, as amended.

"Independent Director" shall mean a director of the Corporation who is not at the time of initial appointment and has not been at any time during the preceding five (5) years: (a) stockholder, director, officer, employee or partner of the Corporation or the Company or an affiliate of either of them; (b) a customer, supplier or other person who derives more than 10% of its purchases or revenues from its activities with the Corporation or the Company or any affiliate of either of them; (c) a person or other entity controlling or under common control with any such stockholder, partner, customer, supplier or other person; or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, customer, supplier or other person. (As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities, by contract or otherwise.)

"Parent" means, with respect to a corporation, any other Person owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the corporation.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, government or any agency or political subdivision thereof or any other entity.

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ARTICLE X
SEPARATENESS COVENANTS

Notwithstanding any provision hereof to the contrary, for so long as the First Mortgage Loan is outstanding and not discharged of record, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in these Articles of Incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

- a. To maintain books and records separate from any other person or entity;
- b. To maintain its bank accounts separate from any other person or entity;
- c. Not to commingle its assets with those of any other person or entity and to hold all of its assets in its own name;
- d. To conduct its own business in its own name;
- e. To maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other person or entity;
- f. To pay its own liabilities and expenses only out of its own funds;
- g. As appropriate for the organizational structure of the Corporation and the Company, to observe all corporate, partnership and other organizational formalities;
- h. To maintain an arm's-length relationship with its Affiliates and to enter into transactions with affiliates only on a commercially reasonable basis;
- i. To pay the salaries of its own employees from its own funds;
- j. To maintain a sufficient number of employees in light of its contemplated business operations;
- k. Not to guarantee or become obligated for the debts of any other entity or person;
- l. Not to hold out its credit as being available to satisfy the obligations of any other person or entity;
- m. Not to acquire obligations or securities of its Affiliates or owners, including partners, members or shareholders, as appropriate;
- n. Not to make loans to any other person or entity or to buy or hold evidence of indebtedness issued by any other person or entity (other than cash and investment-grade securities);

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- o. To allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including paying for office space and services performed by an employee of an Affiliate;
- p. To use separate stationery, invoices and checks bearing its own name;
- q. Not to pledge its assets for the benefit of any other personal entity;
- r. To hold itself out as a separate entity;
- s. To correct any known misunderstanding regarding its separate identity;
- t. Not to identify itself as a division of any other person or entity; and
- u. To maintain adequate capital in light of its contemplated business operations.

ARTICLE XI
BYLAWS

The initial bylaws of the Corporation shall be adopted by the Board of Directors. Bylaws shall be adopted, amended or repealed from time to time by either the shareholders or the Board of Directors, but the Board of Directors shall not amend or repeal any bylaw adopted by the shareholders if the shareholders specifically provide that such bylaw is not subject to amendment or repeal by the Board of Directors.

ARTICLE XI
CONFLICT BETWEEN THE ARTICLES OF INCORPORATION AND THE BYLAWS

If any provisions of these Articles of Incorporation conflict with any provisions of the bylaws, these Articles of Incorporation shall govern.

ARTICLE XII
INCORPORATOR

The name and address of the incorporator of the Corporation is Edgar Lewis, Esq., of Gunster, Yoakley & Stewart, P.A. at 2 South Biscayne Boulevard, Suite 3400, Miami, Florida 33131.

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IN WITNESS WHEREOF, the incorporator has executed these Articles on the 11th day
of July, 2000.



Edgar Lewis
Incorporator

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 11th day of July, 2000
by EDGAR LEWIS, as Incorporator of TH Apts, Inc., on behalf of the corporation. He is personally
known to me ☒ or has produced _____ as identification.



Notary Public, State of Florida
Print Name: _____

My Commission Expires:

(SEAL)



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**TH APTS, INC.
CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE
FOR THE SERVICE OF PROCESS WITHIN FLORIDA, NAMING
AGENT UPON WHOM PROCESS MAY BE SERVED**

In compliance with Section 48.091, Florida Statutes, the following is submitted:

TH Apts, Inc., desiring to organize or qualify under the laws of the State of Florida, with its principal place of business at the 9200 S. Dadeland Blvd., Suite 500, Miami, FL 33156, State of Florida, has named Robert E. Spielman as its agent to accept service of process within Florida. The address for said agent is 9200 S. Dadeland Blvd., Suite 500, Miami, FL 33156.


Robert E. Spielman, President

Dated: 7/11, 2000

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CERTIFICATE OF ACCEPTANCE
OF AUTHORIZED AGENT**

Having been named to accept service of process for the above stated Corporation, 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.

By: 

Robert E. Spielman

Dated: July 11, 2000

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