

P00000066685

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Division of Corporations  
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BASIC AMENDMENT

TH APTS, INC.

FILED  
00 OCT 11 AM 9:15  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

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**ARTICLES OF AMENDMENT  
TO THE ARTICLES OF INCORPORATION  
OF  
TH APTS, INC.**

The undersigned, EDGAR LEWIS, ESQ., Sole Incorporator of TH APTS, INC. a Florida corporation (the "Corporation") filed on July 12, 2000, effective July 11, 2000, and registered under document number P00000066685, hereby certifies:

1. The name of this corporation is TH APTS, INC.
2. Pursuant to Section 607.1006 of the Florida Statutes, the first sentence of Article I is hereby deleted in its entirety and a new first sentence is inserted in its place as follows:

The name of the corporation is SEAVIL, INC.

3. Pursuant to Section 607.1006 of the Florida Statutes, Article III is hereby deleted in its entirety and replaced with:

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 SEASIDE VILLAGE, LTD. (the "Company") whose purpose is to acquire Seaside Village Apartments in Galveston, 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 DOCUMENT PREPARED BY:**

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H00000053494**B. Certain Prohibited Activities**

- (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 Mortgage Capital Funding, Inc., Commercial Mortgage Pass-Through Certificates Series 1998-MC1, 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,

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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 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.

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4. Pursuant to Section 607.1006 of the Florida Statutes, Article X is hereby deleted in its entirety and replaced with:

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 represents, warrants and covenants as follows:

(a) Corporation does not own and will not own any asset or property other than (i) the Property, and (ii) incidental personal property necessary for the ownership or operation of the Property.

(b) Corporation will not engage in any business other than the ownership, management and operation of the Property and Corporation will conduct and operate its business as presently conducted and operated.

(c) Corporation will not enter into any contract or agreement with any Guarantor or any party which is directly or indirectly controlling, controlled by or under common control with Corporation or Guarantor (an "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 third parties other than any Guarantor or Affiliate.

(d) Corporation has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the Debt, and (ii) trade and operational debt incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances. No indebtedness other than the Debt may be secured (subordinate or pari passu) by the Property.

(e) Corporation has not made and will not make any loans or advances to any third party, nor to Guarantor, any Affiliate or any constituent party of Corporation.

(f) Corporation is and will remain solvent and Corporation will pay its debts from its assets as the same shall become due.

(g) Corporation has done or caused to be done and will do all things necessary, to preserve its existence, and Corporation will not, nor will Corporation permit Guarantor to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, trust or other organizational documents of Corporation or Guarantor in a manner which would adversely affect the Corporation's existence as a single-purpose entity.

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(h) Corporation will maintain books and records and bank accounts separate from those of its Affiliates and any constituent party of Corporation, and Corporation will file its own tax returns.

(i) Corporation will be, and at all times 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 Corporation or any Guarantor).

(j) Corporation will preserve and keep in force and effect its existence, good standing and qualification to do business in the state in which the Property is located.

(k) From the rental income of the Property, Corporation will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(l) Neither Corporation nor any constituent party of Corporation will seek the dissolution or winding up, in whole or in part, of Corporation, nor will Corporation merge with or be consolidated into any other entity.

(m) Corporation will not commingle the funds and other assets of Corporation with those of any Affiliate, any Guarantor, any constituent party of Corporation or any other person.

(n) Corporation has and will 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 constituent party of Corporation, Affiliate, Guarantor or any other person.

(o) Corporation does not and will not hold itself out to be responsible for the debts or obligations of any other person (provided, that the foregoing shall not prevent 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).

(p) Corporation shall obtain and maintain in full force and effect, and abide by and satisfy the material terms and conditions of, all material permits, licenses, registrations and other authorizations with or granted by any governmental authorities that may be required from time to time with respect to the performance of its obligations under the mortgage.

5. Except as above amended, the Articles of Incorporation of the Corporation, as filed with the Florida Department of State, shall remain in full force and effect.

6. The foregoing amendment was duly approved as of October 10, 2000, by written consent of the Sole Incorporator of the Corporation. At the time of adoption of the amendment, no

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shares had yet been issued in the Corporation and, therefore in accordance with Section 607.1005, shareholder approval is not required.

IN WITNESS WHEREOF, the undersigned, as Sole Incorporator of the Corporation, has executed these Articles of Amendment this 10 day of October, 2000.

  
\_\_\_\_\_  
EDGAR LEWIS, ESQ., Sole Incorporator

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