

PO2000063376

Florida Department of State

Division of Corporations
Public Access System
Katherine Harris, Secretary of State

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H02000148938 2)))

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To: Division of Corporations
Fax Number : (850)205-0381

From: Account Name : CORPORATE & CRIMINAL RESEARCH SERVICES
Account Number : 110450000714
Phone : (850)222-1173
Fax Number : (850)224-1640

FILED
02 JUN -7 PM 3:28
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

FLORIDA PROFIT CORPORATION OR P.A.

BROCK APTS GP INC.

Certificate of Status	1
Certified Copy	1
Page Count	10
Estimated Charge	\$87.50

gyc 6/7

06/07/2002 09:59 CORPDIRECT → 2050381

ND.469 002

Department of State ^D 6/6/2002 4:44 ^S PAGE 1/1 RightFAX



FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State

June 6, 2002

CORPORATE & CRIMINAL RESEARCH SERVICES

SUBJECT: BROCK APTS GP INC.
REF: W02000016514

PLEASE GIVE ORIGINAL SUBMISSION
DATE AS FILE DATE.

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refax the complete document, including the electronic filing cover sheet.

THE REGISTERED AGENT ADDRESS IN ARTICLE VI IS INCOMPLETE AND DOES NOT COINCIDE WITH THE ADDRESS IN ARTICLE IX. NAME IS SAME ADDRESS IS DIFFERENT. PLEASE CLARIFY.

If you have any further questions concerning your document, please call (850) 245-6933.

Dale White
Document Specialist
New Filings Section

FAX Aud. #: H02000148938
Letter Number: 802A00037382

PLEASE GIVE ORIGINAL SUBMISSION
DATE AS FILE DATE.

Division of Corporations - P.O. BOX 6327 - Tallahassee, Florida 32314

H02000148938

ARTICLES OF INCORPORATION

OF

BROCK APTS GP INC.

The undersigned incorporator hereby executes and acknowledges these Articles of Incorporation for the purpose of forming a corporation for profit in accordance with the laws of the State of Florida.

ARTICLE I

Name

The name of this corporation shall be:

Brock Apts GP Inc.

ARTICLE II

Principal Office and Mailing Address

The address of the principal office and the mailing address of this corporation shall be:

1 Place Ville Marie
Suite 3835
Montreal, Quebec, Canada H3B 4M6

ARTICLE III

Business and Purposes

For so long as that certain mortgage loan (the "Loan") as defined in the Limited Partnership Agreement (the "Partnership Agreement") of Brock Apts Partners L.P., a Texas limited partnership (the "Partnership"), is outstanding and unpaid, the purpose for which this corporation is organized is limited solely to (a) owning and holding a limited partnership interest in and acting as the general partner of the Partnership; and (b) transacting any and all lawful business for which a corporation may be incorporated under the laws of the State of Florida that is incident, necessary and appropriate to the foregoing. For so long as the Loan is outstanding and unpaid, the corporation shall not acquire any real property or own any assets other than those related to the Partnership and/or otherwise in

FILED
02 JUN -7 PM 3:28
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

H02000148938

furtherance of the purposes of the Partnership, and the corporation shall not engage in any business, and it shall have no purpose, unrelated to the Partnership. After the Loan has been repaid in full, this corporation may transact any and all lawful business for which corporations may be incorporated under the Florida Business Corporation Act of Florida (the "Act"), and any amendments thereto, and in connection therewith, this corporation shall have and may exercise any and all powers conferred from time to time by law upon corporations formed under such Act.

ARTICLE IV

Capital Stock

(a) The aggregate number of shares of capital stock authorized to be issued by this corporation shall be 10,000 shares of common stock with a par value of \$1.00 per share. Each share of said stock shall entitle the holder thereof to one vote at every annual or special meeting of the stockholders of this corporation. The consideration for the issuance of said shares of capital stock may be paid, in whole or in part, in cash, in promissory notes, in other property (tangible or intangible), in labor or services actually performed for this corporation, in promises to perform services in the future evidenced by a written contract; or in other benefits to this corporation at a fair valuation to be fixed by the Board of Directors. When issued, all shares of stock shall be fully paid and nonassessable.

(b) In the election of directors of this corporation, there shall be no cumulative voting of the stock entitled to vote at such election.

ARTICLE V

Existence of Corporation

This corporation shall have perpetual existence.

ARTICLE VI

Registered Office and Registered Agent

The initial registered office of this corporation shall be located at 101 E. Kennedy Blvd., #2700 Tampa, FL 33602 and the initial registered agent of this corporation at such office shall be Nelson T. Castellano. This corporation shall have the right to change such registered office and such registered agent from time to time, as provided by law.

H02000148938

ARTICLE VII

Board of Directors

(a) The Board of Directors of this corporation shall consist of not less than one (1) nor more than fifteen (15) members, the exact number of directors to be fixed from time to time by the stockholders or the bylaws. The business and affairs of this corporation shall be managed by the Board of Directors, which may exercise all such powers of this corporation and do all such lawful acts and things as are not by law directed or required to be exercised or done only by the stockholders. A quorum for the transaction of business at meetings of the directors shall be all of the number of directors determined from time to time to comprise the Board of Directors, and the act of all of the directors present at a meeting at which a quorum is present shall be the act of the directors. Subject to the bylaws of this corporation, meetings of the directors may be held within or without the State of Florida. Directors need not be stockholders. The stockholders of this corporation may remove any director from office at any time with or without cause.

(b) For so long as the Loan is outstanding and unpaid, the Board of Directors shall include an Independent Director as a member. As used in these Articles of Incorporation, the term "Independent Director" means a duly appointed member of the Board of Directors who has not been at any time during the five (5) years preceding his or her initial appointment, and shall not be at any time while serving as Independent Director of any of the following: (i) a stockholder, director (other than in his or her capacity as an Independent Director, officer, employee, partner, or member of the Partnership, any partner, shareholder or member of the Partnership, or any Affiliate of any of the foregoing; (ii) a stockholder, director, officer, employee, partner, or member of any customer of, supplier or service provider (including professionals) to, or other person who derives more than 10% of its purchases, revenues, compensation, or other financial remuneration from its activities with the Partnership, any partner, shareholder or member of the Partnership, any Affiliate of any of the foregoing, or any person or entity who otherwise is financially dependent upon an officer, director, or employee of the Partnership, any partner or member of the Partnership, or any family member (by blood or marriage) of any such officer, director, or employee, or a business entity owned or controlled by any of the foregoing; (iii) a person or other entity controlling or under common control with any such stockholder, director, officer, employee, partner, member, customer, supplier or other person; or (iv) a member of the immediate family of any individual described in (i), (ii), or (iii) above.

(c) Notwithstanding any other provisions of these Articles of Incorporation, for so long as the Loan is outstanding and remains unpaid, this corporation, without the unanimous affirmative vote of all of the members of the Board of Directors of this corporation: (i) shall not permit the Partnership to own any encumbered asset other than the property acquired and securing the Loan (the "Property") and incidental personal property necessary for the operation of the Property; (ii) will not engage in any business other than the ownership, management and operation of the Property; (iii)

H02000148938

will not enter into any contract or agreement with any member, manager, general partner, principal or affiliate of the Partnership or any affiliate thereof, 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; (iv) will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Loan and unsecured trade and operational debt incurred in the ordinary course of business not outstanding for more than sixty (60) days with trade creditors and in amounts as are normal and reasonable under the circumstances and will not cause any debt whatsoever to be secured (senior, subordinate or *pari passu*) by the Property except the loan; (v) will not make any loans or advances to any third party (including any member, manager, general partner, principal or affiliate of the Partnership, or any guarantor); (vi) will be solvent and pay its debts from its assets as the same shall become due; (vii) will do all things necessary to preserve its existence and observe corporate formalities, and will not, nor will any partner, limited or general, shareholder or member thereof, amend, modify or otherwise change its partnership certificate, partnership agreement, certificate, articles of incorporation, by-laws, articles of organization, operating agreement or regulations in a manner which adversely affects the Partnership's, or any such partner's, member's or shareholder's existence as a single-purpose, single-asset "bankruptcy remote" entity; (viii) will conduct and operate its business as presently conducted and operated; (ix) will maintain books and records and bank accounts separate from those of its affiliates, including its general partners, principals and members; (x) 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 of the Partnership, any constituent party of the Partnership, any guarantor or any affiliate of any constituent party or guarantor), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks from any other entity; (xi) will file its own tax returns; (xii) 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; (xiii) will not, nor will any member, manager, shareholder, partner, principal or affiliate, seek the dissolution or winding up, in whole or in part, of Partnership; (xiv) will not enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all of the business or assets of, or any stock or beneficial ownership of, any entity; (xv) will not commingle the funds and other assets of the Partnership with those of any member, manager, general partner, principal or affiliate or any other person; (xvi) will maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or any other person; (xvii) will, and any general partner or managing member of the Partnership will at all times following their respective formations, observe all legal and customary formalities regarding their respective formation; (xviii) will not hold itself out to be responsible for the debts or obligations of any other person; (xix) upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against the Partnership, the Partnership shall not seek a supplemental stay or otherwise pursuant to 11 U.S.C. 105 or any other provision of the Act, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of the Lender under the Loan to enforce any rights of Lender against any guarantor or indemnitor of the secured obligations or any other party liable with respect thereto by virtue of any indemnity, guaranty or otherwise; and (xx)) shall not cause the Partnership or the corporation to take any action which,

H02000148938

H02000148938

under the terms of the organizational documents of the corporation or the Partnership, as applicable, requires the unanimous affirmative vote of one hundred percent (100%) of the members of Board of Directors or of the Partners, as applicable, unless at the time of such action there shall be at least one member of the Board of Director is an Independent Director.

(d) For so long as the Loan is outstanding and remains unpaid, The unanimous vote or consent of all of the directors of the corporation (including the Independent Director) shall be required with respect to the following matters:

(1) To file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding for the corporation or the Partnership; institute any proceedings under any applicable insolvency law or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally with respect to the corporation or the Partnership;

(2) To seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the corporation or the Partnership, or a substantial portion of its or their properties;

(3) To make any assignment for the benefit of the corporation's or the Partnership's creditors;

(4) To dissolve, liquidate, consolidate, merge, or sell all or substantially all of the assets of the corporation or the Partnership;

(5) To amend the corporation's Regulations or amend the Partnership's limited partnership agreement;

(6) To engage in any other business activity other than as described in Article II hereof; and

(7) To take any action in furtherance of the foregoing.

(e) For so long as the Loan is outstanding and remains unpaid, the corporation shall not (i) dissolve or liquidate, in whole or in part, (ii) consolidate or merge with or into another entity, (iii) make an assignment for the benefit of creditors, file a petition in bankruptcy, petition or apply to any tribunal for the appointment of a custodian, receiver, trustee or other similar official for it, or for a substantial part of its property, commence any proceeding under any bankruptcy, reorganizations arrangement, readjustment of debt or liquidation law, consent or acquiesce in the filing of any such petition, application, proceeding or appointment, or admit its inability to pay its debts generally as they become due, (iv) cause or permit the assets or property of the corporation to be subject to any lien other than as provided for in the Loan Documents (as defined in the Partnership Agreement), (v) transfer, in one transaction or series of transaction, all, or substantially all, of its assets, except as required or permitted by the Loan Documents, (vi) cause the Partnership to do any of the foregoing; (vii) incur any indebtedness other than indebtedness incurred in by the corporation in its capacity as

H02000148938

sole general partner the Partnership which is no event shall be more than thirty days past due, or (viii) take any action in furtherance of any of the foregoing.

(f) The directors of the corporation shall be required to consider the interests of the creditors of the corporation in connection with all actions taken by the directors.

(g) When used in these Articles of Incorporation, the following terms shall have the respective meanings set forth below:

"Affiliate" means:

(i) any person or entity directly or indirectly owning, controlling or holding with power to vote ten percent (10%) or more of the outstanding voting securities or interests of such other person or entity;

(ii) any person or entity ten percent (10%) or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by such other person or entity;

(iii) any person or entity directly or indirectly controlling, controlled by or under common control with such other person or entity;

(iv) any officer, director or partner of such other person or entity;

(v) if such other person or entity is an officer, director or partner, any company for which such person or entity acts in any such capacity; and

(vi) any close relative or spouse of the specified person.

"Bankruptcy Code" means title 11 of the United States Code entitled "Bankruptcy", as amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors' rights.

ARTICLE VIII

Initial Board of Directors

The initial Board of Directors of this corporation shall consist of the following members, such members to hold office until a successor has been duly elected and qualified. The names and street addresses of the initial directors are:

H02000148938

<u>Name</u>	<u>Address</u>
Lloyd Sheiner	1 Place Ville Marie Suite 3835 Montreal, Quebec, Canada H3B 4M6
Gerald Sheiner	1 Place Ville Marie Suite 3835 Montreal, Quebec, Canada H3B 4M6
Louis Hoppenheim	266 Glengary Avenue Mont-Royal, Quebec, Canada H3R 1A5

ARTICLE IX

Incorporator

The name and street address of the incorporator making these Articles of
Incorporation are:

<u>Name</u>	<u>Address</u>
Nelson T. Castellano	2700 Barnett Plaza 101 E. Kennedy Boulevard Tampa, FL 33602

ARTICLE X

Bylaws

(a) The power to adopt the bylaws of this corporation, to alter, amend or repeal the bylaws, or to adopt new bylaws, shall be vested in the Board of Directors of this corporation; provided, however, that any bylaw or amendment thereto as adopted by the Board of Directors may be altered, amended or repealed by vote of the stockholders entitled to vote thereon, or a new bylaw in lieu thereof may be adopted by the stockholders, and the stockholders may prescribe in any bylaw made by them that such bylaw shall not be altered, amended or repealed by the Board of Directors.

(b) The bylaws of this corporation shall be for the government of this corporation and may contain any provisions or requirements for the management or conduct of the affairs and

H02000148938

business of this corporation, provided the same are not inconsistent with the provisions of these Articles of Incorporation, or contrary to the laws of the State of Florida or of the United States.

ARTICLE XI

Amendment of Articles of Incorporation


This corporation reserves the right to amend, alter, change or repeal any provisions contained in these Articles of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are subject to this reservation. Notwithstanding anything to the contrary contained herein, for so long as the Loan is outstanding and unpaid, Articles III and VII shall not be amended, altered, changed or repealed without the prior written consent of the holder of the Loan.

ARTICLE XII

Affiliated Transactions

The provisions of Section 607.0901 of the Florida Business Corporation Act, relating to affiliated transactions, shall be inapplicable to this corporation.

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles for the uses and purposes therein stated.


Nelson T. Castellano

H02000148938

BROCK APTS GP INC.

ACCEPTANCE OF SERVICE AS REGISTERED AGENT

The undersigned, having been named as registered agent to accept service of process for the above-named corporation, at the registered office designated in the Articles of Incorporation, hereby agrees and consents to act in that capacity. The undersigned is familiar with and accepts the duties and obligations of Section 607.0505, Florida Statutes.

DATED this 6th day of June, 2002.


Nelson T. Castellano

FILED
02 JUN -7 PM 3:28
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

H02000148938