

P02000134293

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐

PICK-UP

☐

WAIT

☐

MAIL

(Business Entity Name)

(Document Number)

Certified Copies \_\_\_\_\_

Certificates of Status \_\_\_\_\_

Special Instructions to Filing Officer:

Office Use Only



000009626470

RECEIVED  
02 DEC 26 AM 11:55  
DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS  
TALLAHASSEE, FLORIDA

FILED  
02 DEC 26 PM 1:35  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ACCOUNT FILING COVER SHEET

ACCOUNT NUMBER: FCA000000005

REFERENCE: 2037656-3  
(Sub Account)

DATE: 12/26

REQUESTOR NAME: Lexis Document Services

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TELEPHONE: (\_\_\_\_) (\_\_\_\_ - \_\_\_\_ ) ext (\_\_\_\_)

CONTACT NAME: \_\_\_\_\_

CORPORATION NAME: Brandywood GP, Inc.

DOCUMENT NUMBER: \_\_\_\_\_  
(if applicable)

AUTHORIZATION: \_\_\_\_\_

Cynthia J. Woodyard

87.50

☒ CERTIFIED COPY (1-9)  
☒ CERTIFICATE OF STATUS (1-9)  
☐ PLAIN STAMPED COPY

( ) Call When Ready  
( ) Walk In  
( ) Mail Out

( ) Call if Problem  
( ) Will Wait

( ) After 4:30  
( ) Pick Up

# ARTICLES OF INCORPORATION

In compliance with Chapter 607 and/or Chapter 621, F.S. (Profit)

## ARTICLE I NAME

The name of the corporation shall be:

BRANDYWOOD GP, INC.

## ARTICLE II PRINCIPAL OFFICE

The principal place of business/mailling address is:

c/o TVO Realty Partners  
70 East Lake Street, Suite 600  
Chicago, IL 60601

## ARTICLE III PURPOSE

The purpose for which the corporation is organized is:

See Exhibit A attached hereto and made a part hereof

## ARTICLE IV SHARES

The number of shares of stock is:

Three Thousand shares of common stock with no par value

## ARTICLE V INITIAL OFFICERS/DIRECTORS (optional)

The name(s), address(es) and title(s):

Director: David L. Vandenburg, 70 East Lake Street, Suite 600, Chicago, IL 60601

Director: Chris Haynes, 501 Executive Center Blvd., Suite 100, El Paso, TX 79902

## ARTICLE VI REGISTERED AGENT

The name and Florida street address of the registered agent is:

LexisNexis Document Solutions Inc., 3953 W.W. Kelley Road, Tallahassee, FL 32311

## ARTICLE VII INCORPORATOR

The name and address of the incorporator is:

Alison M. Mitchell, 203 North LaSalle Street, Suite 1800, Chicago, IL 60601

## ARTICLE VIII SPECIAL PROVISIONS

See Exhibit A attached hereto and made a part hereof

\*\*\*\*\*  
Having been named as registered agent to accept service of process for the above stated corporation at the place designated in this certificate, I am familiar with and accept the appointment as registered agent and agree to act in this capacity

LexisNexis Document Solutions Inc.

By: Michelle Krafel, Asst. Secretary  
Signature/Registered Agent

12/23/02  
Date

Alison Mitchell  
Signature/Incorporator

12/20/02  
Date

FILED  
02 DEC 26 PM 1:35  
SECRETARY OF STATE  
TALLAHASSEE FLORIDA

## EXHIBIT A

[Attached to Articles of Incorporation of Brandywood GP, Inc.]

### ARTICLE III

The sole purpose of the Corporation is: (1.) to acquire, own, hold and maintain an interest as the sole General Partner in DBC Brandywood Partners, Ltd., a Florida limited partnership whose sole purpose is to acquire, own, hold, maintain and operate a Parcel of real estate known as Brandywood Apartments, Orlando, Florida ( the "Property"), together with such other activities as may be necessary or advisable in connection with the ownership of the Property. Notwithstanding anything contained herein to the contrary, the Corporation shall not engage in any business, and it shall have no purpose, unrelated to the Property and shall not acquire any real property or own assets other than those related to the Property and/or otherwise in furtherance of the purposes of the Corporation; and (2.) To engage in such other lawful activities permitted to corporations pursuant to Chapter 607 Florida Statutes as are incidental, necessary or appropriate to the foregoing.

\*\*\*\*\*

### ARTICLE VIII

1. **SPE Definitions.** For purposes of this Article, the following defined terms shall have the meanings specified below:
  - A. "Affiliate" means, with respect to another person,
    - 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.
- B. "First Mortgage Loan" means the \$28,421,000.00 loan from Column Financial, Inc. ("Lender") to the Partnership secured in part by deeds of trust on the Property.
- C. "Independent Director" shall mean a director of the Corporation so long as such director is not at the time of his or her initial appointment, 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 any of the following: (a) a stockholder, director (other than in his or her capacity as the Independent Director), officer, employee or partner of the Corporation or any partner, shareholder or member of the Partnership or any Affiliate of the foregoing; (b) 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 ten percent (10%) of its purchases, revenues, compensation, or other financial remuneration from its activities with the Partnership, the Corporation, any partner, shareholder or member of the Partnership or the Corporation, or any Affiliate of any the foregoing or any person or entity who otherwise is financially dependent upon an officer, director, or employee of the Partnership, the Corporation, any partners or members of the Partnership or the Corporation, 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; (c) 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 (d) a member of the immediate family of any individual described in (a), (b), or (c) above. Notwithstanding anything to the contrary contained herein, the Independent Director of the Corporation shall be permitted to serve as an Independent Director of other "special purpose entities" which are now, or may in the future be, established by an Affiliate of the Partnership, or the Corporation. 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.
- D. "Partnership" means DBC Brandywood Partners, Ltd., of which the Corporation is the sole general partner (the "General Partner").

E. "Project" or "Property" mean that certain real estate owned by the Partnership.

F. "Single-Purpose Entity" means an entity that:

(1) does not own and will not own any encumbered asset other than (i) the Property, and (ii) incidental personal property necessary for the operation of the Property;

(2) is not engaged and will not engage in any business other than the ownership, management and operation of the Property and any other properties securing the First Mortgage Loan ("Other Mortgaged Properties");

(3) will not enter into any contract or agreement with any shareholder, partner, or Affiliate of the Corporation or 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 and except as permitted under the First Mortgage Loan documents (the "Loan Documents");

(4) has not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the First Mortgage Loan, and (ii) 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; no debt whatsoever may be secured (senior, subordinate or pari passu) by the Property and Other Mortgaged Properties except the First Mortgage Loan;

(5) has not made and will not make any loans or advances to any third party (including any shareholder, partner or Affiliate of the Corporation, the Partnership, or any guarantor thereof);

(6) is and will be solvent and able pay its debts from its assets as the same shall become due;

(7) has done or caused to be done and will do all things necessary to preserve its existence and observe corporate and partnership formalities (as applicable), and will not, nor will any partner or shareholder thereof, amend, modify or otherwise change its partnership certificate, partnership agreement, articles of incorporation, or by-laws in a manner which adversely affects the said entity's existence as a Single-Purpose Entity;

(8) will conduct and operate its business as presently conducted and operated;

(9) will maintain books and records and bank accounts separate from those of its Affiliates, including its shareholders and partners except as permitted under the Loan Documents;

(10) 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 said entity, any constituent party of said entity, and 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;

(11) will file its own tax returns;

(12) 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;

(13) will not, nor will any shareholder, partner or Affiliate, seek the dissolution or winding up, in whole or in part, of said entity;

(14) 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;

(15) will not commingle the funds and other assets of the Partnership or the Corporation with those of any shareholder, partner or Affiliate or any other person except as permitted under the Loan Documents;

(16) has and 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;

(17) has, and any shareholder or partner of said entity have, at all times since their respective formations, observed all legal and customary formalities regarding their respective formations and will continue to observe all legal and customary formalities;

(18) does not and will not hold itself out to be responsible for the debts or obligations of any other person except for the other "Borrowers" pursuant to the Loan Documents;

(19) upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against it, the Corporation or 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 Lender 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 has not caused and shall not cause, as applicable, its board of directors or partners to take any action which, under the terms of the organizational documents for said entity requires the unanimous affirmative vote of one hundred percent (100%) of the members of the board of directors or partners unless at the time of such action there shall be at least one director who is an Independent Director.

2. **Covenants with Respect to Indebtedness, Operations and Fundamental Changes of the Partnership.** Until such time as the First Mortgage Loan is paid in full, the Corporation and the Partnership shall be Single-Purpose Entities, the Corporation shall at all times cause there to be at least one duly appointed Independent Director as a member of its board of directors, and except as expressly permitted in the First Mortgage Loan, the Corporation shall be prohibited from doing any of the following:

A. incurring any indebtedness, secured or unsecured, direct or contingent (including guarantying any obligation), on behalf of itself or the Partnership, other than the First Mortgage Loan and unsecured trade debt incurred in the ordinary course of business which is payable within sixty (60) days of the date incurred, provided that the total outstanding amount of such trade debt does not exceed any maximum amount provided in the Loan Documents at any one time;

B. dissolving or liquidating, in whole or in part;

C. consolidating or merging with or into any other entity or conveying or transferring its properties and assets substantially as an entirety to any person or entity;

D. amending or causing to be amended Section 7.9 of the Partnership Agreement; or

E. taking any action that might cause the Partnership to become insolvent.

3. **Actions Requiring Unanimous Consent of Directors.** Notwithstanding any other provision of these Articles to the contrary, the unanimous consent of all directors (including the Independent Director) of the Corporation shall be required in order to authorize the Corporation or the Partnership to do any of the following:

A. institute proceedings to be adjudicated bankrupt or insolvent;

B. consent to the institution of bankruptcy or insolvency proceedings against it;

C. file a petition seeking, or consent to, reorganization or relief under any applicable federal or state law relating to bankruptcy;

D. seek or consent to the appointment of a receiver, liquidator, conservator, assignee, trustee, sequestrator, custodian or any other similar official of the Partnership or a substantial part of the property of the Partnership;

E. make any assignment for the benefit of creditors;

F. admit in writing its inability to pay its debt generally as they become due;

G. otherwise seek relief under any laws relating to bankruptcy, insolvency, reorganization, the relief from debts or the protection of debtor generally;



H. to the extent that any of the actions specified in Section 2 above (prohibited acts) are permitted, to take any such action; or

I. take, or induce any other entity to take any action in furtherance of any of the preceding actions.