

PA 700004024



THE UNITED STATES
CORPORATION
COMPANY

ACCOUNT NO. : 072100000032

REFERENCE : 253975 4312366

AUTHORIZATION :

COST LIMIT : \$ 122.50

Patricia Project

ORDER DATE : February 10, 1997

ORDER TIME : 9:56 AM

ORDER NO. : 253975-005

CUSTOMER NO: 4312366

CUSTOMER: Eric Hess, Esq
GOLD & WACHTEL

110 East 59th Street
27th Floor
New York, NY 10022

900002082859--8

DOMESTIC FILING

NAME: MARK NORTHWOOD REALTY, INC.

EFFECTIVE DATE:

☒ ARTICLES OF INCORPORATION
☐ CERTIFICATE OF LIMITED PARTNERSHIP

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

☒ CERTIFIED COPY
☐ PLAIN STAMPED COPY
☐ CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Gail L. Shelby

EXAMINER'S INITIALS:

2-13-97
KR

File 1st
W97-3309
611

Dmc 2-10-97

RECEIVED
96 FEB 10 AM 11:35
TALLAHASSEE, FLORIDA

FILED
97 FEB 10 AM 8:45
TALLAHASSEE, FLORIDA



FLORIDA DEPARTMENT OF STATE

Sandra B. Mortham
Secretary of State

February 10, 1997

CSC NETWORKS
1201 HAYS STREET
TALLAHASSEE, FL 32301

SUBJECT: MARK NORTHWOOD REALTY, INC.
Ref. Number: W97000003309

We have received your document for MARK NORTHWOOD REALTY, INC. and the authorization to debit your account in the amount of \$122.50. However, the document has not been filed and is being returned for the following:

The registered agent must sign accepting the designation.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (904) 487-6923.

Doris McDuffie
Corporate Specialist Supervisor

Letter Number: 197A00007036

RESUBMIT

Please give original
submission date as file date

RECEIVED
96 FEB 12 PM 4:22
DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA

ARTICLES OF INCORPORATION
OF
MARK NORTHWOOD REALTY, INC.

FILED
97 FEB 10 AM 8:45
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

WE, THE UNDERSIGNED, being desirous of associating ourselves together for the purposes of becoming a corporation for profit under the laws of the State of Florida, do make, subscribe and acknowledge these Articles of Incorporation, pursuant to Chapter 607 of the Florida Business Corporation Act, and other applicable provisions of the Corporation Law of the State of Florida, and acts amendatory thereof and supplemental thereto.

FIRST: The name of the corporation is:

MARK NORTHWOOD REALTY, INC.

SECOND: The purpose of the corporation is to act as a general partner of

Mark Northwood Associates, Limited Partnership.

THIRD: The corporation shall be authorized to issue One Hundred (100)

shares of common stock, no par value.

FOURTH: The address of the initial registered office of this corporation in

this state is located at 1201 Hays Street, Tallahassee, Fla. 32301 and the name of the registered agent at said address is Corporation Service Company.

FIFTH: The address of the principal office of this corporation is located at c/o

Mark Centers Trust, 600 Third Avenue, Kingston, PA 18704.

SIXTH: The name and address of the incorporators are as follows:

NAME

ADDRESS

Eric W. Hess

Gold & Wachtel, L.P.
110 E. 59th Street
27th Floor
New York, NY 10022

SEVENTH: The number of directors constituting the initial Board of Directors is eight (8); and the name and address of the initial Board of Directors, to serve until the first annual meeting of shareholders, or until the successors are elected and qualify, are as follows:

NAME

ADDRESS

Marvin L. Slomowitz

600 Third Avenue
Kingston Pa. 18704-1679

Marvin L. Levine

110 East 59th Street
New York, N.Y. 10022

Harvey Shanus

338 Stanley Drive
Kingston, PA 18704

Joseph L. Castle, II

One Radnor Corporate Center
100 Matsonford Road, Suite 250
Radnor, PA 19087

Lawrence J. Longua

520 Madison Avenue, 24th Floor
New York, NY 10024

Vincent Weber

888 16th Street, NW 7th Floor
Washington, DC 20006

Mark A. Ferrucci

Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Adrianne Horne

Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

EIGHTH: Any person who was or is a party or is threatened to be made a party to any proceeding, (whether or not by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee, or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, shall be entitled to be indemnified by the corporation to the full extent then permitted by law against liability incurred in connection with such proceeding, including any appeal thereof. Such right of indemnification shall incur whether or not the claim asserted is based on matters which antedate the adoption of this Article EIGHTH. Such right of indemnification shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall incur to the benefit of the heirs and personal representatives of such a person. The indemnification provided by this Article EIGHTH shall not be deemed exclusive of any other rights which may be provided now or in the future under any provision currently in effect or hereafter adopted by the By-Laws, by any agreement, by vote of stockholders, by resolution of disinterested directors, by provision of law, or otherwise.

NINTH: No director of the corporation shall be personally liable to the corporation or any other person for monetary damages for breach of fiduciary duty as a director, except for liability (i) for a violation of criminal law, unless the director has reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful, (ii) for any transaction from which the director directly or indirectly derived an improper personal benefit, (iii) under section 607.144 of the Florida General Corporation Act, (iv) for conscious disregard for the best interest of the corporation or willful misconduct, or (v) for

recklessness or an act or omission which was committed in bad faith or with a malicious purpose or in a matter exhibiting wanton and willful disregard of human, rights, safety, or property.

TENTH: The following provisions shall only be applicable to the corporation for the duration of that certain mortgage loan with a maximum principal amount of Twenty-Three Million (\$23,000,000) Dollars, by and between Normura Asset Capital Corporation as Mortgagor and the corporation as Mortgagee (the "Loan"):

Limitation on Indebtedness.

The corporation shall be prohibited from incurring any indebtedness on its own behalf excluding any liability or obligation that the corporation may undertake in connection with the Loan.

Prohibition on Taking Certain Corporate Actions.

The corporation shall be prohibited from engaging in any dissolution, liquidation, consolidation, merger or asset sale, or amending these articles of incorporation, for so long as the Loan is outstanding.

Unanimous Consent Provisions.

The unanimous consent of the directors of the corporation shall be required to:

- a. File, or consent to the filing of, a bankruptcy or insolvency petition or otherwise institute insolvency proceedings or cause the partnership for which it is a general partner to do so;
- b. To dissolve, liquidate, consolidate, merge, or sell all or substantially all of the assets of the corporation;
- c. Engage in any business for any purpose other than the purpose set forth herein;
- d. Amend these articles of incorporation or to vote to amend the limited partnership agreement of the partnership for which the corporation is the general partner.

Interests of the Corporation's Creditors

The corporation shall take into account the interests of the creditors of the corporation as well as the interests of the corporation.

Separateness Covenants.

The corporation shall:

- a. Maintain its books and records separate from any other person or entity;
- b. Maintain its accounts separate from any other person or entity;
- c. Not commingle its assets with those of any other entity;
- d. Conduct the business of the corporation in its own name;
- e. Maintain separate financial statements for the corporation;
- f. Pay any of the corporation's liabilities out of its funds;
- g.. Observe all corporate formalities, such as corporate minutes and resolutions;
- h. Not undertake any action which is inconsistent with an arm's length relationship with its affiliates;
- i. Pay the salaries of its own employees and maintain a sufficient number of employees in light of its contemplated business operations;
- j. Not guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the liabilities or obligations of others except in relation to the Loan;
- k. Not acquire the obligations or securities of its directors, officers or shareholders, except with respect to the shareholders as such obligation or securities may relate to the Loan;
- l. Allocate fairly and reasonably any overhead for shared office space;
- m. Not pledge its assets for the benefit of any other entity or make any loans or advances to any entity, except in relation to the Loan;
- n. Hold itself out a separate entity;
- o. Correct any known material misunderstanding relating to its separate identity; and
- p. Maintain adequate capital in light of its contemplated business operations.

Independent Directors

The Board of Directors of the Corporation shall include one independent director. When voting on matters subject to the vote of the Board of Directors, notwithstanding that the Corporation is not then insolvent, the Independent Director shall take into account the interests of the creditors of the Corporation as well as the interests of the Corporation.

For purposes of this Article the following terms shall have the meanings set forth below:

(i) An "Independent Director" shall be an individual who: (A) is not and has not been employed by the Corporation or any subsidiary or affiliate of any of them as a director, officer or employee within the five years immediately prior to such individual's appointment as an Independent Director; (B) is not (and is not affiliated with a company or a firm that is) a significant advisor or consultant to the Corporation or its subsidiary or affiliate within the five years immediately prior to such individual's appointment as an Independent Director; (C) is not affiliated with a significant customer or supplier of the Corporation within the five years immediately prior to such individual's appointment as an Independent Director; (D) is not affiliated with a company of which the Corporation or any of its limited partners or any subsidiary and affiliate of any of them is a significant customer or supplier within the five years immediately prior to such individual's appointment as an Independent Director; (E) does not have significant personal services contract(s) with the Corporation or any subsidiary or affiliate of any of them within the five years immediately prior to such individual's appointment as an Independent Director; (F) is not affiliated with a tax-exempt entity that receives significant contributions from the Corporation or any subsidiary or affiliate of any of them within the five years immediately prior to such individual's appointment as an Independent Director; (G) is not the beneficial owner at the time of such individual's appointment as an Independent Director, or at any time thereafter while serving as an Independent Director, of such number of shares of any classes of common stock of the Corporation, a Corporation, the value of which constitutes more than 5% of such individual's net worth; (H) is not a spouse, parent, sibling or child of any person described by (A) through (G), and (I) not a major creditor of the Corporation or any subsidiary or affiliates of any of them within the five years prior to such appointment as an Independent Director.

(ii) An "affiliate" of a person or a person "affiliated with," a specified person, shall mean a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the specified person.

(iii) The term "control" (including the terms "controlling," "controlled by" and "under common control with") shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise; provided, however, that a person shall not be deemed to control another person solely because he or she is a director of such other person.

(iv) The term "person" shall mean any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, as well as any syndicate or group deemed to be a person pursuant to Section 13(d) (3) of the Securities Exchange Act of 1934, as amended.

(v) A "subsidiary" of an entity shall mean any corporation a majority of the voting stock of which is owned, directly or indirectly through one or more other subsidiaries, buy such entity.

(vi) A person shall be deemed to be, or to be affiliated with, a company or firm that is a "significant advisor or consultant to the Corporation or any subsidiary or affiliate of any of them" if he, she or it, as the case may be, received or would receive fees or similar compensation from any such entity or any of its subsidiaries or affiliates in excess of the lesser of (A) 5% of the consolidated gross revenues which such entity and its subsidiaries received for the sale of their products and services during the last fiscal year of such entity; (B) 10% of the gross revenues of the person during the last calendar year, if such person is a self-employed individual and (C) 10% of the consolidated gross revenues received by such company or firm for the sale of its products and services during its last fiscal year, if the person is a company or firm, provided, however, that director's fees and expense reimbursements shall not be included in the gross revenues of an individual for purposes of this determination.

(vii) A "significant customer of the Corporation or any subsidiary or affiliate of any them" shall mean a customer from which such entity and any of its subsidiaries or affiliate collectively in the last fiscal year of such entity received payments in consideration for the products and services of such entity and its subsidiaries and affiliate which are in excess of 3% of the consolidated gross revenues of such entity and its subsidiaries during such fiscal year.

(viii) A "significant supplier of the Corporation or any subsidiary or affiliate of any the them" shall mean a supplier to which such entity and any of its subsidiaries or affiliates collectively in the last fiscal year of such entity made payments in consideration for the supplier's products and services in excess of 3% of the consolidated gross revenues of such entity and its subsidiaries during such fiscal year.

(ix) The Corporation or any subsidiary and affiliate of any of them shall be deemed a "significant customer" of a company if such entity and any of its subsidiaries and affiliates collectively were the direct sources during such company's last fiscal year of in excess of 5% of the gross revenues which such company received from the sale of its products and services during such fiscal year.

(x) The Corporation or any subsidiary and affiliate of any of them shall be deemed a "significant supplier" of a company if such entity and any of its subsidiaries or affiliates collectively received in such company's fiscal year payments from such company in excess of 5%

of the gross revenues which such company received during such fiscal year for the sale of its products and services.

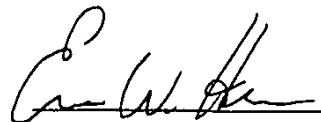
(xi) A person shall be deemed to have "significant personal services contract(s) with the Corporation or any subsidiary or affiliate of any of them" if the fees and other compensation received by the person pursuant to personal services contract(s) with such entity and any of its subsidiaries or affiliates exceeded or would exceed 5% of his or her gross revenue during the last calendar year.

(xii) A tax-exempt entity shall be deemed to receive "significant contributions from the Corporation or any subsidiary or affiliate of any of them" if such tax-exempt entity received during its last fiscal year, or expects to receive during its current fiscal year, contributions from such entity or its subsidiaries or affiliates in excess of the lesser of (A) 3% of the consolidated gross revenues of such entity and its subsidiaries during such fiscal year and (B) 5% of the contributions received by the tax-exempt entity during such fiscal year.

(xiii) A person shall be deemed to be a "major creditor of the Corporation or any subsidiary or affiliate of any of them" if it is a financial institution to which such entity, such subsidiary or such affiliate owes outstanding indebtedness for borrowed money in a sum sufficiently large as would reasonably be expected to influence the judgment of such Independent Director adversely to the interests of the Corporation when its interests are adverse to such entity or any of its subsidiaries or affiliates.

IN WITNESS WHEREOF, the undersigned have this 7TH day of February, 1997

made and subscribed these Articles of Incorporation at New York, New York for the uses and purposes aforesaid.



STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Be it remembered that on this 7th day of February, 1997, personally came before me, a Notary Public in and for the County and State aforesaid, Eric W. Hess, party to the foregoing document, known to me personally to be such, and who, being by me first duly sworn, acknowledged the said document to be their act and deed and that the facts therein stated are true.

Given under my hand and seal of office the day and year aforesaid.

Laura Iside
Notary Public

LAURA ISIDE
Notary Public, State of New York
No. 0115503422
Qualified in Kings County 98
Commission Expires Oct. 11, 1998

ACCEPTANCE AS REGISTERED AGENT

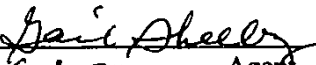
OF

MARK NORTHWOOD REALTY, INC.

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 status relative to the proper and complete performance of my duties.

Dated: February , 1997

Corporation Service Company


Gail SHELBY - Agent

Registered Office Address:

Corporation Service Company
1201 Hays Street
Tallahassee, FL 32301

FILED
97 FEB 10 AM 8:46
SECRETARY OF STATE
TALLAHASSEE, FLORIDA