

P97000014024



ACCOUNT NO. : 072100000032

REFERENCE : 264735 4312366

AUTHORIZATION :

COST LIMIT : \$ 87.50

Patricia Pajute

ORDER DATE : February 19, 1997

ORDER TIME : 9:30 AM

ORDER NO. : 264735-005

600002092146--0

CUSTOMER NO: 4312366

CUSTOMER: Eric Hess, Esq
Gold & Wachtel
110 East 59th Street
27th Floor
New York, NY 10022

DOMESTIC AMENDMENT FILING

NAME: MARK NORTHWOOD REALTY, INC.

EFFECTIVE DATE:

☒ ARTICLES OF AMENDMENT
☐ RESTATED ARTICLES OF INCORPORATION

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:

N. HENDRICKS FEB 24 1997

FILED
97 FEB 19 AM 10:17
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

97 FEB 19 AM 10:54
CLERK OF CORPORATION



FLORIDA DEPARTMENT OF STATE
Sandra B. Mortham
Secretary of State

February 19, 1997

CSC

TALLAHASSEE, FL

SUBJECT: MARK NORTHWOOD REALTY, INC.
Ref. Number: P97000014024

We have received your document for MARK NORTHWOOD REALTY, INC. and the authorization to debit your account in the amount of \$87.50. However, the document has not been filed and is being returned for the following:

The Articles of Correction must be signed by the Chairman of the Board or any officer of the corporation.

Number 3 of the document appears to have a typo. Shouldn't it read, "... and reasons for which they are INCORRECT are set forth below"?

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) 487-6903.

Nancy Hendricks
Corporate Specialist

Letter Number: 997A00008854

**ARTICLES OF CORRECTION
FOR
MARK NORTHWOOD REALTY, INC.**

FILED
97 FEB 19 AM 17
SECRETARY
TALLAHASSEE

In compliance with the requirements of Sections 607.0124 and 617.0124 of the Florida Statutes (relating to statement of correction) the undersigned association or other person, desiring to correct an inaccurate record of corporate or other action or correct defective or erroneous execution of a document, hereby states that:

1. The name of the association or other person is: Mark Northwood Realty, Inc.
2. The Articles of Incorporation to be hereby corrected was filed by the Department of State on February 10, 1997.
3. The incorrect statements and reasons for which they are ^{incorrect} are set forth below:

A. The first paragraph of Article 10 erroneously identified the amount of the mortgage loan and the mortgagee. The provision should have referenced that certain mortgage loan, by and between Nomura Asset Capital Corporation (together with its successors and assigns, the "Lender") as Mortgagor and the Mark Northwood Associates, Limited Partnership (the "Partnership") as Mortgagee.

B. The header entitled "Limitation on Indebtedness" omitted reference to limitations on the corporation's ability to incur indebtedness on behalf of the Partnership.

C. The header entitled "Prohibition on Taking Certain Corporation Actions" omitted reference to the prohibition of the corporation from winding up so long as the Loan is outstanding. Further, the section omitted reference to the corporation's preclusion from causing the Partnership to engage in similar actions for the duration of the Loan.

D. The header entitled "Separateness Covenants" omitted certain clarifications with regards to the corporation's separation from other entities.

E. The header entitled "Independent Directors" referenced an incorrect definition of independent directors and incorrectly states that the corporation will have one independent director. The corporation will have two independent directors.

4. The above referenced Article 10 of the Articles of Incorporation is set forth in corrected form in Exhibit A attached hereto and made a part hereof.

IN TESTIMONY WHEREOF, the undersigned association or other person has caused this statement to be signed by a duly authorized officer thereof or otherwise in its name this ____ day of February, 1997.

BY: _____

Marvin Levine, Secretary

EXHIBIT A

**Attachment to the Articles for Correction
for
Mark Northwood Realty, Inc.**

ARTICLE 10 of the Articles of Incorporation of Mark Northwood Realty, Inc. is hereby corrected as follows:

TENTH: The following provisions shall only be applicable to the corporation for the duration of that certain mortgage loan by and between Normura Asset Capital Corporation (together with its successors and assigns, the "Lender") as Mortgagor and Mark Northwood Associates Limited Partnership (the "Partnership") 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. The corporation shall not cause the Partnership to incur any indebtedness other than the indebtedness permitted under the Loan Agreement between the Partnership and Lender (the "Loan Agreement").

Prohibition on Taking Certain Corporate Actions.

The corporation shall be prohibited from engaging in any dissolution, liquidation, consolidation, winding up, merger or asset sale, or amending these articles of incorporation, for so long as the Loan is outstanding. The corporation shall not cause the Partnership to undertake any dissolution, liquidation, consolidation, winding up, merger or asset sale or amendment to its partnership agreement, 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, accounting records and other entity documents for the Partnership;
- f. Pay any of the corporation's liabilities out of its own funds and assets;
- 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 from its own funds 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 partners, members, or shareholders;
- l. Allocate fairly and reasonably any overhead for expenses, including, without limitation, shared office space and shall use separate stationary, invoices and checks;
- m. Not pledge its assets for the benefit of any other entity or make any loans or advances to any entity;

- n. Hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other division or entity;
- o. Correct any known material misunderstanding relating to its separate identity;
- p. Maintain adequate capital in light of its contemplated business operations.
- q. Hold its assets in its own name;
- r. Not identify its partners, or any of their affiliates, as divisions of the Partnership; and
- s. Cause the Partnership to comply with Section 9.11 of the Partnership's partnership agreement.

Independent Directors

The Board of Directors of the Corporation shall include two independent directors. 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) "Independent Director" means a duly appointed member of the board of directors of the relevant entity who shall not have been, at the time of such appointment or at any time in the preceding five (5) years, (a) a direct or indirect legal or beneficial owner in such entity or any of its affiliates, (b) a creditor, supplier, employee, officer, director, a manager or contractor of such entity or any of its affiliates, (c) a person who controls such entity or any of its affiliates, or (d) a member of the immediate family of a person defined in (a), (b), or (c) above.

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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, by such entity.

(v) 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.

(vi) 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.

(vii) 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.

(viii) 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.

(ix) 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.

(x) 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.

(xi) 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.

(xii) 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.