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THE UNITED STATES CORPORATION COMPANY

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AUTHORIZATION : Patricia Pijets

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CUSTOMER NO: 10915A

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CUSTOMER: Elizabeth Tobin, Legal Asst WALKER, KOEGLER & DILLINGHAM

217 Ponte Vedra Park Drive Suite 200 Ponte Vedra Bea, FL 32082

DOMESTIC FILING

NAME: 330 WEST HIALEAH, INC.

EFFECTIVE DATE:

XX ARTICLES OF INCORPORATION CERTIFICATE OF LIMITED PARTNERSHIP

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY PLAIN STAMPED COPY CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Christopher Smith

EXAMINER'S INITIALS:

FILED SECRETARY OF STATE DIVISION OF CORPORATIONS 98 JUL 28 PM 1:42

RECEIVED DIVISION OF CORPORATION 98 JUL 28 PM 12:19

Handwritten initials/signature

**ARTICLES OF INCORPORATION  
OF  
330 WEST HIALEAH, INC.**

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
98 JUL 28 PM 1:42

The undersigned hereby files these Articles of Incorporation for the purpose of becoming a corporation for profit under the laws of the State of Florida.

**ARTICLE I.**

The name of the Corporation shall be: 330 WEST HIALEAH, INC.

**ARTICLE II.**

The Corporation shall have perpetual existence.

**ARTICLE III.**

The general nature of the businesses to be transacted by the Corporation shall be as follows:

Section 1. Purpose. The nature of the business and of the purposes to be conducted and promoted by the Corporation is to engage solely in the activity of acting as the managing member of 330 West Hialeah Associates Hialeah, L.L.C. (the "Limited Liability Company") whose purpose is to acquire from Hialeah CT Venture, that certain parcel of real property described as Lots 1, 2, 3, 4, 18, 19, 20, 21, 22, 23 and 24, Block 1, of East Hialeah, according to the Plat thereof as recorded in Plat Book 8, at Page 29, of the Public Records of Dade County, Florida, together with all improvements thereon, (the "Property") and to own, hold, sell assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property. The Corporation shall exercise all powers enumerated in Chapter 607 of the Florida Statutes (1997) necessary or convenient to the conduct, promotion, or attainment of the business or purposes otherwise set forth herein.

Section 2. Limitations. The Corporation shall only incur or cause the Limited Liability Company to incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien (the "First Mortgage") in favor of First Union National Bank or its successors or assigns ("First Union") exists on any portion of the Property, the Corporation shall not and shall not cause the Limited Liability Company to incur, assume, or guaranty any other indebtedness. For so long as the First Mortgage exists on any portion of the Property, the Corporation shall not and shall not cause the Limited Liability Company to dissolve or liquidate or consolidate or merge with or into any other entity, or convey or transfer its properties and assets substantially as an entirety to any entity. For so long as the First Mortgage exists on any portion of the Property, the Corporation shall not voluntarily commence a case with respect to itself and shall not cause the Limited Liability Company to voluntarily commence a case with respect to itself, as a debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors. For so long as the First Mortgage exists on any portion of the Property, (i) no material amendment to these Articles of Incorporation nor the Corporation's Bylaws nor to the Articles of Organization of the Limited Liability Company may be made without first obtaining approval of the mortgagee holding the First Mortgage on any portion

of the Property and (ii) in the event the existence of the Limited Liability Company is not continued, the Corporation shall not cause the Limited Liability Company to liquidate the Property.

Section 3. Indemnification. Any indemnification of the Corporation's directors and officers shall be fully subordinated to any obligations respecting the Limited Liability Company and the Property (including, without limitation, the First Mortgage) and such indemnification shall not constitute a claim against the Corporation or the Limited Liability Company in the event that cash flow in excess of amounts necessary to pay holders of such obligations is insufficient to pay such obligations.

Section 4. Separateness/Operations Matters. For so long as the First Mortgage exists on any portion of the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in the Articles of Incorporation, as amended, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from that of any of its parent, the Limited Liability Company and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.

2. It shall maintain corporate records and books of account separate from those of its parent, the Limited Liability Company and any affiliate.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions. The Board of Directors shall include at least one individual who is an Independent Director. As used herein, an "Independent Director" shall be an individual who: (i) is not and has not been employed by the corporation or any of its respective subsidiaries or affiliates as a director, officer or employee within the five years immediately prior to such individual's appointment as an Independent Director, (ii) is not (and is not affiliated with a company or firm that is) a significant advisor or consultant of the corporation or any of its subsidiaries or affiliates, (iii) is not affiliated with a significant customer or supplier of the corporation or any of its subsidiaries or affiliates; (iv) is not affiliated with a company of which the corporation or any of its subsidiaries or affiliates is a significant customer or supplier; (v) does not have significant personal service contract(s) with the corporation or any of its subsidiaries or affiliates; (vi) is not affiliated with a tax exempt entity that receives significant contributions from the corporation or any of its subsidiaries or affiliates; (vii) is not a beneficial owner at the time of such individual's appointment as an Independent Director, or at any time thereafter while serving as Independent Director, of such number of shares of any classes of common stock of the corporation the value of which constitutes more than 5% of the outstanding common stock of the corporation; and (viii) is not a spouse, parent, sibling, or child of any person described by (i) through (vii).

4. It shall observe all corporate formalities.

5. It shall not commingle assets with those of its parent, the Limited Liability Company and any affiliate.

6. It shall conduct its own business in its own name.

7. It shall maintain financial statements separate from its parent, the Limited Liability Company and any affiliate.

8. It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent, the Limited Liability Company and any affiliate.

9. It shall maintain an arm's length relationship with its parent, the Limited Liability Company and any affiliate.

10. It shall not guarantee or become obligated for the debts of any other entity, including its parent, the Limited Liability Company and any affiliate, or hold out its credit as being available to satisfy the obligations of others.

11. It shall use stationery, invoices and checks separate from its parent, the Limited Liability Company and any affiliate.

12. It shall not pledge its assets for the benefit of any other entity, including its parent, the Limited Liability Company and any affiliate.

13. It shall hold itself out as an entity separate from its parent, the Limited Liability Company and any affiliate.

14. For purposes of this Article III, the following terms shall have the following meanings:

**"affiliate"** means any person controlling or controlled by or under common control with the parent, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer, or employee of the Corporation, its parent or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this Corporation, its parent or any affiliate. For purposes of this definition, **"control"** when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract otherwise; and the terms **"controlling"** and **"controlled"** have meanings correlative to the foregoing.

**"parent"** means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the corporation.

“person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

Section 5. Voting. When voting on matters concerning the Limited Liability Company, notwithstanding that the Limited Liability Company is not then insolvent, the Corporation shall take into account the interest of the Limited Liability Company’s creditors, as well as those of its members.

#### ARTICLE IV.

The aggregate number of shares of stock which this Corporation shall have authority to issue shall be 10,000 shares of common stock, each with a par value of \$.01.

#### ARTICLE V.

The principal office and mailing address of this Corporation shall be 15 Maple Avenue, Morristown, New Jersey 07960.

#### ARTICLE VI.

The street address of the initial registered office of this Corporation in Florida shall be 217 Ponte Vedra Park Drive, Suite 200, Ponte Vedra Beach, Florida 32082, and its initial registered agent at that address shall be Randal C. Fairbanks. The registered office and registered agent of the Corporation may be changed from time to time upon notification to the proper authorities.

#### ARTICLE VII.

The number of the Directors of this Corporation shall not be less than one nor more than seven as fixed from time to time by the provisions of the Bylaws.

#### ARTICLE VIII.

The names and street addresses of the members of the first Board of Directors, who, subject to the provisions of the Bylaws and these Articles of Incorporation, shall hold office for the first year of the Corporation's existence or until their successors are elected and have qualified, are as follows:

<u>Name</u>	<u>Street Address</u>
Randal C. Fairbanks	217 Ponte Vedra Park Drive, Suite 200 Ponte Vedra Beach, Florida 32082

#### ARTICLE IX.

Subject to the provisions of Article III hereof, the Corporation's Board of Directors is specifically authorized from time to time to enter into agreements not inconsistent with these Articles or the law

with respect to the alienation, sale, pledge, purchase and redemption of shares of stock of the Corporation.

#### ARTICLE X.

Subject always to statutory restrictions and to the limitations set forth in Article III hereof, the following specific provisions are made for the regulation of the business and the conduct of the affairs of the Corporation:

Section 1. Subject to such further restrictions as may be set forth in the Bylaws, the Board of Directors shall have the general management and control of the business and may exercise all of the powers of the Corporation except such as may be by statute, or by these Articles of Incorporation or amendment thereto, or by the Bylaws as constituted from time to time, expressly conferred upon or reserved to the Shareholders.

Section 2. Subject always to such Bylaws as may be adopted from time to time by the Shareholders, the Board of Directors is expressly authorized to adopt, alter and amend the Bylaws of the Corporation, but any Bylaws adopted, altered or amended by the Directors may be altered, amended or repealed by the Shareholders.

Section 3. The Corporation shall have such officers as from time to time may be provided in the Bylaws and such officers shall be designated in such manner and shall hold their offices for such terms and shall have such powers and duties as may be prescribed by the Bylaws or as may be determined from time to time by the Board of Directors.

Section 4. No Director or officer of this Corporation shall, in the absence of fraud, be disqualified by his office from dealing or contracting with this Corporation either as vendor, purchaser or otherwise, nor, in the absence of fraud, shall any contract, transaction or act of this Corporation be void or voidable or affected by reason of the fact that any such Director or officer, or any firm of which any such Director or officer is a member or an employee, or any corporation of which any such Director or officer is an officer, Director, Shareholder or employee, has any interest in such contract, transaction or act, whether or not adverse to the interest of this Corporation, even though the vote of the Director or Directors or officer or officers having such interest shall have been necessary to obligate this Corporation upon such contract, transaction or act; and no Director or Directors or officer or officers having such interest shall be liable to this Corporation or to any Shareholder or creditor thereof or to any other person for any loss incurred by it under or by reason of any such contract, transaction or act; nor shall any such Director or Directors or officer or officers be accountable for any gains or profits realized thereon.

#### ARTICLE XI.

Any action of the Shareholders may be taken without a meeting if consent in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Notice of any such action so taken shall be

given within ten (10) days of the date of such action to those Shareholders entitled to vote thereon who did not give their written consent.

#### ARTICLE XII.

If all, or any, of the Shareholders or Subscribers to the stock of the Corporation shall enter into any agreement between themselves or with the Corporation or third persons, abridging, limiting, restricting or changing the rights or interest of any one or more of the Shareholders or Subscribers to sell, assign, transfer, mortgage, pledge, hypothecate or transfer on the books of the Corporation, any and all of the stocks of the Corporation held by them, and if a copy of the agreement is filed with the Corporation, all certificates of shares, subject to such agreement or restriction, shall have a reference thereto endorsed thereon by an officer of the Corporation and such stock shall not thereafter be transferred on the books of the Corporation except in accordance with the terms and provisions of the agreement. If the agreement so provides, the certificates of stock shall be registered so that shares standing in the name of any person as pledgee, trustee or other fiduciary may be voted, in person or by proxy, and without proof of authority.

#### ARTICLE XIII.

A Shareholder shall not be liable for dividends illegally declared, distributions illegally made to Shareholders or any other action taken in reliance in good faith upon financial statements of the Corporation represented to him to be correct by the President of the Corporation or the officer having charge of the books of account, or certified by an independent or certified accountant to clearly reflect the financial condition of the Corporation; nor shall there be any liability if in good faith in determining the amount available for dividends or distribution, the Shareholder considers the assets to be of ample value.

#### ARTICLE XIV.

The name and street address of the Incorporator of these Articles of Incorporation is as follows:

<u>Name</u>	<u>Street Address</u>
Randal C. Fairbanks	217 Ponte Vedra Park Drive, Suite 200 Ponte Vedra Beach, Florida 32082

#### ARTICLE XV.

This Corporation reserves the right to amend, alter, change or repeal any provisions contained herein in the manner now or hereafter prescribed by law, and all rights conferred on Shareholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, the undersigned subscribing incorporator, has hereunto set his hand and seal for the purpose of forming this Corporation under the laws of the State of Florida, and does

hereby make, subscribe, acknowledge and file in this office of the Secretary of State of the State of Florida these Articles of Incorporation and does certify that the facts herein stated are true, all on this 27th day of July, 1998.

Randal C. Fairbanks  
Randal C. Fairbanks

STATE OF FLORIDA )

COUNTY OF ST. JOHNS )

The foregoing Articles of Incorporation were acknowledged before me this 27th day of July, 1998, by Randal C. Fairbanks  who is personally known to me or  who has produced \_\_\_\_\_ as identification, and who acknowledged that he signed such instrument of his own free will.

Elizabeth F. Tobin  
Notary Public, State of Florida at Large  
Notary's printed or stamped name:  
My commission expires:





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### ACCEPTANCE OF REGISTERED AGENT

The undersigned, being the person named in the foregoing Articles of Incorporation of **330 West Hiialeah, Inc.** as the registered agent of this Corporation, hereby consents to accept service of process for the above stated Corporation at the place designated in the Articles of Incorporation, and accepts the appointment as registered agent and agrees to act in this capacity. The undersigned further agrees to comply with the provisions of all statutes relating to the proper and complete performance of his duties, and is familiar with and accept the obligations of the position of registered agent.

By: Randal C. Fairbanks  
Randal C. Fairbanks, Registered Agent

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