

TRANSMITTAL LETTER

P01000/15290

Department of State
Division of Corporations
P. O. Box 6327
Tallahassee, FL 32314

SUBJECT: FAB REIT, Inc.
(PROPOSED CORPORATE NAME - MUST INCLUDE SUFFIX)

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*****87.50 *****87.50

Enclosed are an original and one (1) copy of the articles of incorporation and a check for:

\$70.00 Filing Fee
 \$78.75 Filing Fee & Certificate of Status

\$78.75 Filing Fee & Certified Copy
 \$87.50 Filing Fee, Certified Copy & Certificate of Status
ADDITIONAL COPY REQUIRED

FROM: Tiffany Stephens
Name (Printed or typed)
Balch & Bingham LLP
1901 Sixth Avenue North, Suite 2600
Address
Birmingham, Alabama 35203
City, State & Zip
(205) 226-8782
Daytime Telephone number

SECRETARY OF STATE
TALLAHASSEE, FLORIDA
01 DEC -3 AM 8:27
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NOTE: Please provide the original and one copy of the articles.

ARTICLES OF INCORPORATION

OF

FAB REIT, INC.

ARTICLE I

THE CORPORATION; DEFINITIONS

SECTION 1.1 Corporate Name. The name of the corporation (hereinafter the "Corporation") is FAB REIT, Inc.

SECTION 1.2 Definitions. As used in these Articles of Incorporation, the following terms shall have the following meanings unless the context otherwise requires:

"Accumulated Dividends" shall have the meaning ascribed to it in Section 4.2(b).

"Beneficial Ownership" shall mean ownership of Common Stock or Preferred Stock by a Person who is or would be treated as an owner of such shares of Common Stock or Preferred Stock either directly or constructively through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code. The terms "Beneficial Owner," and "Beneficially Owned" shall have the correlative meanings.

"Board of Directors" shall mean the Board of Directors of the Corporation.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Constructive Ownership" shall mean ownership of shares of Common Stock or Preferred Stock by a Person who is or would be treated as an owner of such shares of Common Stock or Preferred Stock either directly or constructively through the application of Section 318 of the Code, as modified by Section 856(d)(5) of the Code. The terms "Constructive Owner," "Constructively Owns" and "Constructively Owned" shall have the correlative meanings.

"Market Price" shall mean in the case of Common Stock the net asset value per share of Common Stock as determined in good faith by the Board of Directors and in the case of Preferred Stock an amount equal to the Liquidation Preference of the Preferred Stock as hereinafter defined.

"Person" shall mean an individual, corporation, limited partnership limited liability company, general partnership, joint stock company or association, joint venture, association, consortia, company, trust, bank, trust company, land trust, common law trust, business trust, or other entity and governments and political subdivisions thereof.

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“REIT” shall mean a Real Estate Investment Trust under Section 856 of the Code.

“REIT Provisions of the Code” shall mean Sections 856 through 859 of the Code and any successor or other provisions of the Code relating to real estate investment trusts (including provisions as to the attribution of ownership of beneficial interests therein) and the Treasury Regulations promulgated thereunder.

“Shareholders” shall mean holders of record of outstanding shares of Common Stock and Preferred Stock of the Corporation.

“Transfer” shall mean any sale, transfer, gift, assignment, devise or other disposition of Common Stock or Preferred Stock, including, without limitation, (i) the granting of any option or entering into any agreement for the sale, transfer or other disposition of Common Stock or Preferred Stock or (ii) the sale, transfer, assignment or other disposition of any securities or rights convertible into or exchangeable for Common Stock or Preferred Stock, whether voluntary or involuntary, whether of record or beneficially and whether by operation of law or otherwise.

ARTICLE II

PRINCIPAL OFFICE

SECTION 2.1 Principal Office. The principal office and mailing address of the Corporation is located at 7700 US Highway 98 West, Santa Rosa Beach, Florida 32459.

ARTICLE III

PURPOSE

SECTION 3.1 Purpose and Powers of Corporation. The nature of the business of the Corporation and its objects, purposes and powers are:

(a) To engage in the business of real estate investing through the buying, selling, holding and servicing of mortgages, deeds of trust, leases on real estate, or any credit secured by such instruments or otherwise by any interests in real estate, together with the buying, selling, holding and servicing of securities or other obligations backed by such instruments and all other related activities;

(b) To manage, purchase or acquire by assignment, transfer or otherwise, and hold, mortgage or otherwise pledge, and to sell, exchange, transfer, deal in and in any manner dispose of, real or personal property of any kind, class, interest, or type, wheresoever situated, and to exercise, carry out and enjoy any license, power, authority, concession, right or privilege which any corporation may make or grant in connection therewith;

(c) To subscribe for, acquire, hold, sell, assign, transfer, mortgage, pledge, or in any manner dispose of shares of stock, bonds or other evidences of indebtedness or securities issued or created by any other corporation of Florida or any other state or any foreign country and, while the owner thereof, to exercise the rights, privileges and powers of ownership, including the rights to vote thereon to the same extent as a natural person may do, subject to the limitations, if any, on such rights now or hereafter provided by the laws of Florida;

(d) To make contracts, including guarantee and suretyship contracts and indemnity agreements, incur liabilities, borrow money, issue its notes, bonds and other obligations (which may be convertible into or include the option to purchase other securities of the Corporation), secure any of its obligations (or the obligations of others for whom it can make guarantees, whether or not a guarantee is made) by mortgage or pledge of or creation of security interests in any of its property, franchises, or income;

(f) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(g) To be a promoter, incorporator, partner, member, trustee, associate, or manager of any domestic or foreign corporation, partnership, joint venture, trust or other entity;

(h) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, or other welfare, benefit or incentive plans for any or all of its current, future or former directors, officers, employees and agents;

(i) To make donations for the public welfare or for charitable, scientific or educational purposes; and

(j) In general, to carry on any other lawful business whatsoever in connection with the foregoing or which is calculated, directly or indirectly, to promote the interest of the Corporation or to enhance the value of its properties.

The powers, objects and purposes of the Corporation stated herein shall not be deemed to exclude or in any way limit by inference any powers, objects or purposes which the Corporation is empowered to exercise, whether expressly by purpose or by any of the laws of the State of Florida or any reasonable construction of such laws.

ARTICLE IV

SHARES OF STOCK

SECTION 4.1 Authorized Shares. The Corporation is authorized to issue two classes of shares designated "Common Stock" and "Preferred Stock," respectively. The total number of shares which this Corporation shall have authority to issue is 1500. The number of shares of Common Stock authorized to be issued is 1000, with a par value of \$.01 per share, the number of shares of Preferred Stock authorized to be issued is 500, with a par value of \$200 per share. The rights, preferences, privileges and restrictions granted to and imposed upon the Common Stock and Preferred Stock are set forth below in this Article.

SECTION 4.2 Dividend Rights.

(a) Common Stock. The holders of shares of Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation, out of the assets of the Corporation which are by law available therefor, dividends or distributions payable in cash, in property or in securities of the Corporation, subject to the dividends payable to the holders of Preferred Stock as provided in Section 4.2(b).

(b) Preferred Stock. The holders of shares of Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation, out of the assets of the Corporation which are by law available therefor, cash dividends at a rate of \$_____ per share per annum in preference and in priority over dividends upon the Common Stock. Dividends on each share of Preferred Stock shall accumulate, whether or not earned or declared, from the date of issuance. Any accumulation of dividends on the Preferred Stock shall not bear interest. The term "accumulated dividends" as used herein shall mean accrued and unpaid dividends on the Preferred Stock. The holders of Preferred Stock shall not be entitled to any dividends other than the cash dividends provided for in this Section 4.2(b). No dividend shall be declared or paid on the Common Stock when the Corporation has failed to pay an annual dividend on the Preferred Stock for the current or any preceding year.

SECTION 4.3 Rights Upon Liquidation.

(a) Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of, or any distribution of the assets of, the Corporation, each holder of shares of Common Stock shall be entitled to receive, ratably, with each other holder of Common Stock, that portion of the assets of the Corporation available for distribution to its Shareholders as the number of shares of Common Stock held by such holder bears to the total number of shares of Common Stock then outstanding, subject to the Liquidation Preference of the holders of Preferred Stock as provided in Section 4.3(b).

(b) Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of or any distribution of the assets of the Corporation, each holder of

shares of Preferred Stock shall be entitled to receive out of the assets of the Corporation before any payment or declaration and setting apart for payment of any amount shall be made in respect of the Common Stock an amount equal to \$_____ per share, plus an amount per share equal to all declared but unpaid dividends thereon (the "Liquidation Preference"). If upon any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary the assets to be distributed to the holders of the Preferred Stock shall be insufficient to permit the payment of the Liquidation Preference, then all of the net assets of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation, available for distribution to the Shareholders shall be distributed ratably (per share) to the holders of the Preferred Stock. After payment in full of the Liquidation Preference, the holders of the Preferred Stock shall not be entitled to participate with the holders of the Common Stock in the distribution of any remaining net assets of the Corporation.

SECTION 4.4 Voting Rights.

(a) Common Stock. The holders of shares of Common Stock shall be entitled to vote on all matters (for which holders of Common Stock shall be entitled to vote thereon) at all meetings of the Shareholders of the Corporation and shall be entitled to one vote for each share of Common Stock held by them.

(b) Preferred Stock. The holders of shares of Preferred Stock shall not be entitled to vote on any matters (except as required by law).

(c) Unanimous Consent of Shareholders in Lieu of Meeting. As provided in Section 607.0704 of the Florida Business Corporation Act, any action that is required or permitted to be taken at a meeting of the Shareholders may be taken without a meeting if the action is unanimously consented to and taken by all persons who would be entitled to vote at a meeting. The action must be evidenced by one or more written consents describing the action taken, signed by all Shareholders entitled to take action without a meeting and delivered to the Corporation for inclusion in the minutes or filing with the corporate records.

SECTION 4.5 Procedures for Transfer of Common Stock and Preferred Stock.

Any Person who acquires or attempts to acquire shares in violation of Section 4.6 shall immediately give written notice to the Corporation of such event and shall file with the Corporation an affidavit setting forth the number of shares of Common Stock or Preferred Stock (1) directly owned, (2) Constructively Owned, and (3) Beneficially Owned by the Person filing the affidavit. The affidavit to be filed with the Corporation shall set forth all information required to be reported in returns filed by Shareholders under Treasury Regulation Section 1.857-9 issued under the Code or similar provisions of any successor regulation. The affidavit, or an amendment thereto, shall be filed with the Corporation within 5 days after demand therefore and at least 15 days prior to any Transfer which would violate Section 4.6.

SECTION 4.6 Transfer Restrictions.

(a) “100 Shareholders” Restriction. Any Transfer that, if effective, would result in the Common Stock and Preferred Stock being beneficially owned by less than 100 Persons (determined without reference to any rules of attribution) shall be void ab initio as to the Transfer of such shares of Common Stock or Preferred Stock which would be otherwise beneficially owned by the transferee; and the intended transferee shall acquire no rights in such shares of Common Stock or Preferred Stock.

(b) “Closely Held” Restriction. Any Transfer that, if effective, would result in the Corporation being “closely held” within the meaning of Section 856(h) of the Code shall be void ab initio as to the Transfer of the shares of Common Stock or Preferred Stock which would cause the Corporation to be “closely held” within the meaning of Section 856(h) of the Code; and the intended transferee shall acquire no rights in such shares of Common Stock or Preferred Stock.

(c) “Domestically Controlled” Restriction. Any Transfer that, if effective, would result in the Corporation not being a “domestically-controlled REIT” within the meaning of Section 897(h)(4)(B) of the Code shall be void ab initio as to the Transfer of the shares of Common Stock or Preferred Stock which would cause the Corporation to not be a “domestically-controlled REIT” within the meaning of Section 897(h)(4)(B) of the Code; and the intended transferee shall acquire no rights in such shares of Common Stock or Preferred Stock.

(d) General REIT Preservation Restriction. Any Transfer that, if effective, would result in the termination of the status of the Corporation as a real estate investment trust under the REIT Provisions of the Code shall be void ab initio as to the Transfer of the shares of Common Stock or Preferred Stock which would result in the termination of the status of the Corporation as a real estate investment trust under the REIT Provisions of the Code; and the intended transferee shall acquire no rights in such shares of Common Stock or Preferred Stock.

(e) Preferred Stock Transfer Restriction.

(1) *General Restrictions and Procedures.* No holder of Preferred Stock may sell, give, transfer, pledge or otherwise encumber any of his Preferred Stock to any Person without the prior written consent of the Secretary of the Corporation unless such holder of Preferred Stock desiring to make the transfer or encumbrance shall have first made an offer to sell hereinafter described and such offer shall not have been accepted by the Corporation in its entirety.

(2) *Offer by Shareholder.* If any holder of Preferred Stock (a “Selling Shareholder”) desires to sell, give, transfer, pledge or encumber any of his Preferred Stock to any Person he shall first make an offer to sell all of such shares that he desires to sell, give, transfer, pledge or encumber (but not less than all of such shares) to the Corporation for the purchase price per share and on the terms hereinafter set forth. Such offer shall be in writing and shall specify the nature of the sale, gift, transfer, pledge or encumbrance in which the Selling Shareholder desires to engage, including the name or names of the other party or parties to such proposed transaction and the terms thereof, including the purchase price and payment terms, if any, shall have attached a written

copy of the proposed offer to or from the other party or parties to the proposed transaction. The Corporation shall accept or reject the offer in writing within thirty (30) days after receipt thereof.

(3) *Purchase Price and Terms.* The purchase price and terms of payment set forth in any offer by Selling Shareholder under Section 3.6(e)(2) shall be identical to any offer given or received by such Selling Shareholder to or from a proposed third-party purchaser except that if the consideration to be paid to the Selling Shareholder by such proposed third-party purchaser consists in whole or in part of property (rather than cash), the Corporation may transfer cash or other property of similar kind and equivalent value to the Selling Shareholder in payment for his shares of Preferred Stock. If a Selling Shareholder desires to pledge, give or otherwise encumber his shares of Preferred Stock, or make such other transfer or conveyance for which there does not exist an offer by a third-party purchaser that contains purchase price and payment terms, then the purchase price for each share of Preferred Stock sold pursuant to Section 4.6(e)(2) shall be equal to the Market Price of the Preferred Stock.

(4) *Closing of Purchase.* If the shares of Preferred Stock included in the offer made by the Selling Shareholder pursuant to Section 4.6(e)(2) are accepted by the Corporation for purchase, then such shares shall be sold by the Selling Shareholder to the Corporation. The closing of the purchase shall take place at the principal office of the Corporation or at such other place as the parties may agree, not more than thirty (30) days after the latter of (i) the date of the notice of the Corporation's acceptance of any offer, or (ii) the date of the determination of Market Price, if applicable. The purchase price for all shares of Preferred Stock sold pursuant to Section 4.6(e)(2) hereof shall be paid in accordance with the terms of payment determined as set forth above. The Selling Shareholder shall represent and warrant to the Corporation that he is conveying to them such shares, with full warranties of title, free and clear of any claims, options, charges, encumbrances or rights of others, except as may be created by these Articles of Incorporation. In the event the Corporation does not accept the shares of Preferred Stock for purchase, the Selling Shareholder shall deliver the same to the purchaser subject to the terms of this Agreement and shall deliver to the purchaser a copy hereof contemporaneously with the closing.

SECTION 4.7 Remedies for Breach of Transfer Restrictions. If the Board of Directors or its designees shall at any time determine in good faith that a Transfer has taken place in violation of this Agreement or that a Person intends to acquire or has attempted to acquire beneficial ownership (determined without reference to any rules of attribution), Beneficial Ownership or Constructive Ownership of any shares of the Corporation in violation of this Agreement, such Transfer, pledge or encumbrance shall be void ab initio and the Board of Directors or its designees shall take such actions as it or any of its designees deems advisable to refuse to give effect to or to prevent such Transfer, including, but not limited to, refusing to give effect to such Transfer on the books of the Corporation or instituting proceedings to enjoin such Transfer.

SECTION 4.8 Remedies Not Limited. Nothing contained in this Article shall limit the authority of the Board of Directors to take such other action as it deems necessary or advisable to protect the Corporation and the interests of its Shareholders by preservation of the Corporation's status as a real estate investment trust under the REIT provision of the Code.

SECTION 4.9 Ambiguity. In the case of an ambiguity in the application of any of the provisions of this Article, or any definition contained in Section 1.2, the Board of Directors shall have the power to determine the application of such provisions with respect to any situation based on the facts known to it.

SECTION 4.10 Legend. Each certificate for Common Stock and Preferred Stock shall bear the following legend:

"The shares of Common Stock or Preferred Stock represented by this certificate are subject to certain restrictions on transfer including those for the purpose of the Corporation's maintenance of its status as a real estate investment trust under the Internal Revenue Code of 1986, as amended. Any person who attempts to Beneficially Own or Constructively Own shares of Common Stock or Preferred Stock in violation of such restrictions must immediately notify the Corporation. Capitalized terms in this legend have the meanings defined in the Corporation's Articles of Incorporation, a copy of which, including the restrictions on transfer, will be sent without charge to each Shareholder who so requests. If the restrictions on transfer are violated, any such transfer shall be void ab initio.

The shares represented by this certificate have been acquired for investment and have not been registered under the Securities Act of 1933 or any applicable state securities laws. Such shares may not be sold or transferred in the absence of such registration or an opinion of counsel satisfactory to the issuer that such registration is not required by said act or laws."

SECTION 4.11 Owners Required to Provide Information.

(a) Every Beneficial Owner of more than 5.0% (or such other percentage, between 0.5% and 5.0%, as may be required from time to time by the Treasury Regulations) of the outstanding Common Stock or Preferred Stock of the Corporation shall, within 30 days after January 1 of each year, give written notice to the Corporation stating the name and address of such Beneficial Owner, the number of shares Beneficially owned, and description of how such shares are held. Each such Beneficial Owner shall provide to the Corporation such additional information as the Corporation may request in order to determine the effect, if any, of such Beneficial Ownership on the Corporation's status as a REIT.

(b) Each Person who is a Beneficial Owner or Constructive Owner of Common Stock or Preferred Stock and each Person (including the Shareholder of record) who is holding Common Stock or Preferred Stock for a Beneficial Owner or Constructive Owner shall provide to the Corporation such information that the Corporation may request, in good faith, in order to determine the Corporation's status as a REIT.

ARTICLE V

BOARD OF DIRECTORS

SECTION 5.1 Initial Directors. The names and addresses of the persons who are to serve as the initial Board of Directors until the first meeting of Shareholders or until their successors be elected and qualified are as follows:

<u>Name</u>	<u>Address</u>
Pete Knowles	259 Baywinds Drive, Destin, Florida 32541
James H. Taylor	RR 2, Box 6760, Santa Rosa Beach, Florida 32459

SECTION 5.2 Express Powers of the Board of Directors. The business and affairs of the Corporation shall be managed by or under the direction of its Board of Directors. In furtherance, and not in limitation, of the powers conferred by the laws of the State of Florida, the Board of Directors is expressly authorized to:

(a) Adopt, amend, alter, change or repeal the Bylaws of the Corporation, by the affirmative vote of a majority of the whole Board of Directors; provided, however, that the Shareholders entitled to vote may prescribe that any Bylaw adopted by the Shareholders may not be amended, altered, changed or repealed by the Board of Directors; and provided, further, that no Bylaws hereafter adopted shall invalidate any prior act of the directors that would have been valid if such new Bylaws had not been adopted;

(b) Determine the rights, powers, duties, rules and procedures that affect the power of the Board of Directors to manage and direct the business and affairs of the Corporation, including the power to designate and empower committees of the Board of Directors, to elect, appoint and empower the officers and other agents of the Corporation, and to determine the time and place of, and the notice requirements for, Board meetings, as well as quorum and voting requirements for, and the manner of taking, Board action; and

(c) Exercise all such powers and do all such acts as may be exercised or done by the Corporation, subject to the provisions of the laws of the State of Florida, these Articles of Incorporation, and the Bylaws of the Corporation.

SECTION 5.3 Number of Directors. The number of directors constituting the Board of Directors shall be as specified in the Bylaws or fixed in the manner provided therein.

SECTION 5.4 Vacancies of Board in Directors. Any vacancy occurring in the Board of Directors, including a vacancy resulting from an increase in the number of directors, may be filled by the remaining directors in office or the shareholders.

ARTICLE VI

REGISTERED AGENT

SECTION 6.1 Registered Office and Agent. The initial registered office of the Corporation is located at 7770 Highway 98 West, Santa Rosa Beach, Florida 32459. The registered agent is Pete Knowles.

ARTICLE VII

INCORPORATOR

SECTION 7.1 Incorporator. The name and address of the incorporator is as follows:

<u>Name</u>	<u>Address</u>
Pete Knowles	259 Baywinds Drive Destin, Florida 32541

ARTICLE VIII

LIABILITY OF DIRECTORS

A director of the Corporation shall have no personal liability to the Corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for (i) the amount of any financial benefit received by a director to which he or she is not entitled; (ii) an intentional infliction of harm on the Corporation or the shareholders; (iii) a violation of Section 607.0834 of the Florida Business Corporation Act as the same now exist or hereafter be amended; (iv) an intentional violation of criminal law; or (v) a breach of the director's duty of loyalty to the Corporation or its shareholders. If the Florida Business Corporation Act, or any successor statute thereto is hereafter amended to authorize the further elimination or limitation of the liability of a director of a corporation, then the liability of a director of the Corporation, in addition to the limitations on liability provided herein, shall be limited to the fullest extent permitted by the Florida Business Corporation Act, as amended, or any successor statute thereto. No amendment to or repeal of this Article shall apply to or have

any affect on the liability or alleged liability of any director of the Corporation for or with respect to any acts of omissions of such director occurring prior to such amendment or repeal.

ARTICLE IX

AMENDMENT OF ARTICLES OF INCORPORATION

SECTION 9.1 Amendment. The Corporation hereby reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation. Any such amendment, alteration, change or repeal shall require the affirmative vote of both (a) a majority of the members of the Board of Directors then in office and (b) a majority of the voting power of all of the shares of Common Stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE X

SEVERABILITY

SECTION 10.1 Severability. In the event that any of the provisions of these Articles of Incorporation (including any provision within a single Article, Section, paragraph or sentence) is held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions are severable and shall remain enforceable to the full extent permitted by law.

THE UNDERSIGNED, being the incorporator named above, for the purpose of forming a corporation pursuant to the Business Corporation Act of the State of Florida, do make these Articles of Incorporation, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly, have hereunto set my hand as of this 28 day of November, 2001.



Pete Knowles, Incorporator
Registered Agent

I HEREBY AM FAMILIAR WITH AND ACCEPT
THE DUTIES AND RESPONSIBILITIES OF THE
REGISTERED AGENT.