

PO4000122366

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP

☐ WAIT

☐ MAIL

(Business Entity Name)

(Document Number)

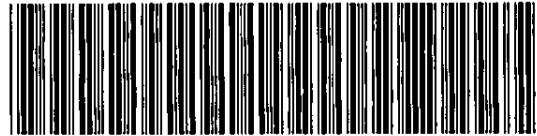
Certified Copies ☒

Certificates of Status ☒

Special Instructions to Filing Officer:

5250

Office Use Only



700249661897

07/16/13--01015--021 **268.75

RECEIVED
DEPARTMENT OF STATE
13 JUL 16 PM 12:20

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
13 JUL 16 AM 11:27

Amend &
Rescind
Articles
7/16/13

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION OF
FOUNTAIN PARK, INC.**

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
13 JUL 16 AM 11:27

Article I: Name

The name of this corporation is Fountain Park, Inc.

Article II: Specific Purposes

The Corporation's business and purpose shall consist solely of the following:

(a) To hold a 1% membership interest and act as the Managing Member of Fountain Park Retail Centre, LLC, a Florida limited liability company, Fountain Park Retail Centre II, LLC, a Florida limited liability company, and Fountain Park Office Building, LLC, a Florida limited liability company (collectively, the "Borrower"), which Borrower is engaged solely in the ownership, operation and management of the real estate project known as Unit 100, 200 and 400 at Fountain Park, a land condominium located Collier County, Florida (the "Property"), pursuant to and in accordance with these Articles of Incorporation and Borrower's Articles of Organization and Operating Agreement (collectively, the "Borrower's Agreements"); and

(b) to engage in such other lawful activities permitted by the laws of the State of Florida as are incidental, necessary or appropriate to the foregoing.

Article III: Registered Office and Agent

The address of the initial registered office of the corporation is 1613 Chinaberry Way, Naples, Collier County, Florida 34105, and the name of its initial registered agent at such address is Mark C. Bates.

Article IV: Capitalization

The amount of the total authorized stock of this corporation is 1,000 shares of \$0.01 par value per share.

Article V: Incorporators

The name and address of the incorporator is:

| <u>Name</u> | <u>Address</u> |
|---------------|--|
| Mark C. Bates | 1613 Chinaberry Way Naples, Florida 34105 |

Article VI: Principal Office

The business address of the corporation's principal office is 1613 Chinaberry Way, Naples, Collier County, Florida 34105.

Article VII: Duration

The period of this corporation's duration is perpetual.

Article VIII: Designation of Initial Directors

(a) The number of directors constituting the initial board of directors is two, and the names and addresses of the persons who are to serve as directors until the first annual meeting of the shareholders or until their successors are elected and qualified are:

| <u>Name</u> | <u>Address</u> |
|------------------|---|
| Mark C. Bates | 1613 Chinaberry Way Naples, Florida 34105. |
| Eun Hee L. Bates | 1613 Chinaberry Way Naples, Florida 34105 |

(b) The number of directors of the corporation set forth in Clause (a) of this Article shall constitute the authorized number of directors until changed by an amendment of these articles of incorporation or by a bylaw duly adopted by the vote or written consent of the holders of a majority of the then outstanding shares of stock in the corporation.

Article IX: Amendment

The Corporation reserves the right to amend or repeal any provisions contained in these Articles of Incorporation, or any amendment hereto, and any right conferred upon the shareholders is subject to this reservation.

Article X: Additional Limitations

Notwithstanding any other provisions of these Articles of Organization, any other organizational documents or any provisions of the law that empowers the Corporation, the following provisions shall be operative and controlling so long as the loan by JEFFERIES LOANCORE LLC, a Delaware limited liability company or its successors and/or assigns (collectively, the "Lender"), to the Company is outstanding: the Corporation shall not, without the unanimous consent of its Directors, do any of the following:

(a) engage in any business or activity other than those set forth in Article II or cause or allow the Borrower to engage in any business or activity other than as set forth in the Borrower Agreements;

(b) incur any indebtedness or assume or guaranty any indebtedness of any Person, other than the obligations (the "Loan") evidenced by a Promissory Note entered by Borrower and made payable to Jefferies LoanCore LLC, a Delaware limited liability company (together with its successors and assigns, "Lender") and a Loan Agreement entered by the Borrower and Lender (as amended, the "Loan Agreement") and secured by the lien on the Property evidenced by a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing filed in the official public records of Collier County, Florida, for the benefit of Lender (the "Security Instrument") and indebtedness permitted therein and normal trade accounts payable in the ordinary course of business (subject to the limitations contained in the Loan Agreement);

(c) cause the Borrower to incur any indebtedness or to assume or guaranty any indebtedness of any Person, other than the Loan and indebtedness permitted by and subject to the terms and limitations contained in the Loan Agreement;

(d) dissolve, wind-up or liquidate, in whole or in part;

(e) cause or consent to the dissolution, winding-up or liquidation, in whole or in part, of the Borrower;

(f) consolidate, combine or merge with or into any other Person or convey or transfer or lease its property and assets substantially as an entirety to any Person;

(g) cause the Borrower to consolidate, combine or merge with or into any Person or to convey or transfer or lease its Property and assets substantially as an entirety to any Person;

(h) with respect to the Corporation or the Borrower, institute proceedings to be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Corporation or the Borrower, or file a petition seeking or consenting to reorganization or relief under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Corporation or the Borrower or a substantial part of the property of the Corporation or the Borrower, or make any assignment for the benefit of creditors, or admit in writing the Corporation's inability to pay its debts generally as they become due, or take corporate action in furtherance of any such action;

(i) amend Articles II, IX or X of these Articles of Incorporation of the Corporation or approve an amendment to Sections 12.1, 12.2, 12.3, 12.4 or 12.5 of the Operating Agreement governing the Borrower; or

(j) withdraw as the Managing Member of the Borrower.

So long as any obligations secured by the Loan remain outstanding and not paid in full, the

Corporation shall have no authority to take, and shall not take, any action in items (a) through (g), (i) or (j) above without (1) the prior written consent of the holder of the Security Instrument and, (2) after any Securitization (as defined in the Loan Agreement) and if requested by holder of the Security Instrument, confirmation from each of the Rating Agencies (as defined in the Loan Agreement) that such action will not result in the qualification, withdrawal or downgrade of any securities rating assigned in connection with the Loan.

Article XI: Separateness/Operations Matters

The Corporation shall:

- (a) maintain books and records and bank accounts separate from those of any other Person and cause the Borrower to maintain books and records and bank accounts separate from those of any other Person;
- (b) maintain its assets in its own name and in such a manner that it is not costly or difficult to segregate, identify or ascertain such assets;
- (c) cause the Borrower to maintain its assets in its own name and in such a manner that it is not costly or difficult to segregate, identify or ascertain such Borrower's assets;
- (d) hold regular meetings of the Directors to conduct the business of the Corporation, and observe all other corporate formalities;
- (e) cause the Borrower to hold regular Borrower meetings, as appropriate, to conduct the business of the Borrower and to observe all other legal formalities;
- (f) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity;
- (g) cause the Borrower to hold itself out to creditors and the public as a legal entity separate and distinct from any other entity;
- (h) prepare separate tax returns and financial statements and not permit its assets to be listed as assets on the financial statements of any other entity, or if part of a consolidated group, then it will be shown as a separate member of such group;
- (i) cause the Borrower to prepare separate tax returns and financial statements for itself and not permit the assets of the Borrower to be listed as assets on the financial statements of any other entity, or if part of a consolidated group, then such that the Borrower will be shown as a separate member of such group;
- (j) allocate and charge fairly and reasonably any common employee or overhead shared with Affiliates;
- (k) cause the Borrower to allocate and charge fairly and reasonably any common employee or overhead shared with Affiliates of the Borrower;

(l) transact all business and cause the Borrower to transact all business with Affiliates on an arm's-length basis and pursuant to enforceable agreements, the terms of which are intrinsically fair, commercially reasonable and are no less favorable than would be obtained in a comparable transaction with an unrelated third party;

(m) conduct business in its own name, and use separate stationery, invoices and checks;

(n) cause the Borrower to conduct business in its own name, to use its own separate stationary, invoices and checks;

(o) not commingle its assets or funds or those of the Borrower with those of any other Person;

(p) not assume, guarantee or pay the debts or obligations of any other Person or hold out its credit as being available to satisfy the obligations of others;

(q) not cause or allow the Borrower to assume, guaranty or pay the debts or obligations of any other Person or hold out the credit of the Borrower as being available to satisfy the obligations of others;

(r) neither make any loans or advances to any Person or entity nor hold evidence of indebtedness issued by any Person or entity;

(s) neither cause the Borrower to make any loans or advances to any Person or entity nor cause the Borrower to hold evidence of indebtedness issued by any Person or entity;

(t) timely pay all of its tax obligations and cause the Borrower to timely pay all of its tax obligations;

(u) pay its own liabilities only out of its own funds and cause the Borrower to pay its own liabilities only out of its own funds;

(v) not pledge its assets for the benefit of any other entity;

(w) cause the Borrower to not pledge its assets for the benefit of any other entity;

(x) pay the salaries of its own employees, if any, and maintain a sufficient number of employees in light of the contemplated business operations;

(y) cause the Borrower to pay the salaries of its own employees, if any, and maintain a sufficient number of employees in light of the Borrower's contemplated business operations;

(z) correct any known misunderstanding regarding its separate identity and cause the Borrower to correct any known misunderstanding regarding its separate identity;

(aa) not acquire any securities or obligations of its stockholders, shareholders, officers, directors or any Affiliate of the Corporation, the Borrower or both;

(bb) cause the Borrower to not acquire any securities or obligations of its members or any Affiliate of the Borrower, the Corporation or both;

(cc) cause the officers, directors, managers, members and other representatives of the Corporation to act at all times with respect to the Corporation and Borrower consistent and in furtherance of the foregoing and in the best interests of the Corporation and Borrower while simultaneously considering the interests of its creditors;

(dd) maintain adequate capital in light of the Corporation's contemplated business purpose, transactions and liabilities and cause the Borrower to maintain adequate capital in light of the Borrower's contemplated business purpose, transactions and liabilities;

(ee) remain solvent and pay all of its debts and liabilities from its assets as they become due and cause the Borrower to remain solvent and pay all of its debts and liabilities from the Borrower's assets as they become due; and

(ff) not identify any of its stockholders, shareholders, officers, directors or any Affiliate thereof as a division or part of the Corporation, and will not identify itself as a division or part of any other entity and will neither cause the Borrower to identify any of its members, managers or any Affiliate thereof as a division or part of the Borrower, nor cause the Borrower to identify itself as a division or part of any other entity.

Article XII: Separateness/Operations Matters

All indemnification obligations of the Corporation are fully subordinated to any obligations respecting the Property and such indemnification obligations shall in no event constitute a claim against the Corporation if cash flow in excess of amounts necessary to pay obligations under the Loan is insufficient to pay such indemnification obligations.

Article XIII: Third Party Beneficiary.

Lender shall be regarded as a third party beneficiary for Articles I, IX, X, XI and XII herein.

Article XIV: Amendment and Restatement of Articles of Incorporation.

These articles of incorporation amend and restate all prior articles of incorporation, and any and all prior amendments thereto.

Article XV: Effective Date.

The articles of incorporation shall become effective at 9:00 a.m. E.S.T. on July 18, 2013, unless otherwise revoked.

For the purpose of amending and restating the articles of incorporation under the laws of Florida, I, the undersigned, have personally executed these articles of incorporation on July 10, 2013.

INCORPORATOR:

By: Mark C. Bates
Mark C. Bates, Incorporator

SHAREHOLDER:

By: Eun Hee S. Bates
Eun Hee Bates, Sole Shareholder of the Corporation

DIRECTOR:

By: Mark C. Bates
Mark C. Bates, Sole Director of the Corporation