

9940000790

ACCOUNT NO. 07210 000032

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01 JUL 30 PM 4:14
TALLAHASSEE, FLORIDA
DIVISION OF STATE

REFERENCE : 302883 7144145

AUTHORIZATION : -

COST LIMIT : \$ 35.00

ORDER DATE : July 27, 2001

ORDER TIME : 2:35 PM

ORDER NO. : 302883-005

CUSTOMER NO: 7144145

CUSTOMER: Ms. Caitlin Monck-marcellino
Goodwin Procter Llp
40th Floor
599 Lexington Avenue
New York, NY 10022

*Amended &
Restated &
Name Change*

000004508010--8

W010000017617

DOMESTIC AMENDMENT FILING

NAME: COURTS AT BRICKELL, INC.

** File 1st **

EFFECTIVE DATE:

XX RESTATED ARTICLES OF INCORPORATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX PLAIN STAMPED COPY

CONTACT PERSON: Darlene Ward -- EXT# 1135
EXAMINER'S INITIALS:

DR
8/1/01

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01 JUL 30 PM 3:11
DIVISION OF CORPORATION

402250, 00524, 00672



FLORIDA DEPARTMENT OF STATE

Katherine Harris
Secretary of State

July 31, 2001

CSC
1201 Hays Street
Tallahassee, FL 32301

SUBJECT: COURTS AT BRICKELL, INC.
Ref. Number: P94000079034

RESUBMIT
Please give original
submission date as file date.

We have received your document for COURTS AT BRICKELL, INC. and the authorization to debit your account in the amount of \$35.00. However, the document has not been filed and is being returned for the following:

Please put the "old" name in the heading (Courts at Brickell, Inc.)

If you have any questions concerning the filing of your document, please call (850) 245-6907.

Annette Ramsey
Corporate Specialist

Letter Number: 601A00044208

RECEIVED
01 JUL 31 PM 3:54
DIVISION OF CORPORATION

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
COURTS AT BRICKELL, INC.

FILED
01 JUL 30 PM 4:14
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

To the Department of State
State of Florida:

Pursuant to the provisions of the Florida Business Corporation Act, the corporation hereinafter named (the "Corporation") does hereby amend and restate its Articles of Incorporation as set forth on Exhibit A attached hereto.

1. The name of the corporation is Prisareit, Inc. The Corporation was originally organized under the name Swire Brickell Two Inc. on October 27, 1994.

2. The text of the Amended and Restated Articles of Incorporation of the Corporation, as further amended hereby, is annexed hereto and made a part hereof.

* * * * *

CERTIFICATE

It is hereby certified that:

1. The annexed Amended and Restated Articles of Incorporation contains amendments to the Articles of Incorporation of the Corporation requiring shareholder approval.

2. Articles I, II, III, IV, V, VI, VII and VIII of the Articles of Incorporation of the Corporation are hereby amended so as henceforth to read as set forth in the Restated Articles of Incorporation annexed hereto and made a part hereof.

3. The date of adoption of the aforesaid amendments was July 26, 2001.

4. Only one voting group of shareholders was entitled to vote on the said amendments and restatement.

5. The number of votes cast for the said amendments and restatement by the said voting group of shareholders was sufficient for the approval thereof.

Executed on July 27, 2001

PRISAREIT, INC.

By: 

Name: J. Allen Smith

Title: Treasurer

EXHIBIT A

AMENDED AND RESTATED
ARTICLES OF INCORPORATION

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
COURTS AT BRICKELL, INC.

The undersigned, acting in his capacity as Treasurer of ^{Courts At Brickell, inc.} ~~A~~, a corporation organized and existing pursuant to the Florida Business Corporation Act hereby certifies the following:

FIRST: **Name.** The corporate name of the corporation is (~~Prisareit, Inc.~~ (the "Corporation"). The Corporation was originally organized under the name Swire Brickell Two Inc. on October 27, 1994 and changed its name on July 25, 1997 to Courts at Brickell, Inc.

SECOND: **Purpose.** The purpose for which the Corporation is organized is as follows: to engage in any lawful business for which corporations may be organized under the Florida Business Corporation Act; provided that the Corporation's activities shall be limited in such manner to qualify for and maintain status as a real estate investment trust under Section 856 of the Internal Revenue Code of 1986, as amended (the "Code").

THIRD: **Principal Office and Mailing Address.** The street address of the principal office of the Corporation is c/o Prudential Real Estate Investors, 8 Campus Drive, Parsippany, New Jersey 07054.

FOURTH: **Authorized Shares.** The aggregate number of shares that the Corporation shall have authority to issue is Eleven Thousand (11,000) shares, divided into two classes. The Corporation shall have authority to issue One Thousand (1,000) shares of common stock, having a par value of One Cent (\$0.01) per share (the "Common Stock"), and Ten Thousand (10,000) shares of preferred stock, having a par value of One Cent (\$0.01) per share (the "Preferred Stock"), of which 1,000 shares shall be designated as Series A Redeemable Preferred Stock (the "Series A Preferred Stock"). The Board of Directors may issue the Preferred Stock in one or more series consisting of such numbers of shares and having such preferences, conversion and other rights, voting powers, restrictions and limitations as to dividends, qualifications and terms and conditions of redemption of stock as the Board of Directors may from time to time determine when designating such series.

FIFTH: **Common Stock.** Except as otherwise provided in Article 6 hereof, the holders of the Common Stock shall be entitled to all the preferences, limitations and relative rights provided to shareholders under the Florida Business Corporation Act subject to the following:

5.1 Dividend Rights. Holders of shares of Common Stock are entitled to receive ratably such dividends as may be declared on the Common Stock by the Board of Directors in its discretion. No dividends shall be paid on the Common Stock unless (i) cumulative dividends on Preferred Stock for past dividend periods have been paid in full, (ii) dividends for the current dividend period have been paid in full or sufficient funds for such payment have been set apart, and (iii) payment of the dividends on the Common Stock does not impair the Corporation's

ability to pay future dividends on Preferred Stock, the Liquidation Value (as defined herein) and the Redemption Premium (as defined herein).

5.2 Liquidation Rights. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, or of any reduction in the capital of the Corporation resulting in any distribution of assets to its stockholders, with respect to each share of Common Stock the holder of such share shall be entitled to receive the net assets of the Corporation after any preferential amounts required to be paid or distributed to holders of outstanding Preferred Stock, if any.

5.3 Voting Rights. Holders of shares of Common Stock are entitled to one vote per share on all matters to be voted on by stockholders. Matters submitted for stockholder approval require a majority vote of the shares present and voting thereon, except (i) for election of directors, which is determined by a plurality of the votes cast, or (ii) as otherwise provided by law.

5.4 Other Rights. Holders of shares of Common Stock shall have no redemption or conversion rights or, unless otherwise provided for in an agreement with the Corporation, preemptive rights.

SIXTH: Preferred Stock. The preferences, limitations and relative rights of the Series A Preferred Stock are as follows:

6.1 Definitions. The following terms have the following meanings:

“Liquidation Value” means, with respect to each share of Series A Preferred Stock, the sum of One Thousand Dollars (\$1,000) (that is, \$1,000 per share) plus the amount of any accumulated and unpaid dividends through and including the date of the payment.

“Redemption Premium” means, with respect to each share of Series A Preferred Stock, that percentage of the Liquidation Value determined in accordance with the following schedule: 20% of Liquidation Value for redemptions paid during the period beginning on the date of issuance of such share of Series A Preferred Stock and ending on December 31, 2003; and reducing by an amount equal to 2.5% each calendar year thereafter, with the resultant 17.5% of Liquidation Value for redemptions paid during the year 2004, 15.0% of Liquidation Value for redemptions paid during the year 2005, and so on. No Redemption Premiums will be paid after the year ending December 31, 2010.

“Redemption Price” means, with respect to each share of Series A Preferred Stock, the Liquidation Value plus the Redemption Premium as herein provided to the date fixed for payment.

6.2 Ranking. The Series A Preferred Stock will rank senior to the Common Stock and to any other of the Corporation’s equity securities that by their terms rank junior to the Series A Preferred Stock with respect to payments of dividends or amounts upon its liquidation, dissolution or winding up. The Series A Preferred Stock will rank on a parity with other series

of the Corporation's preferred stock or other equity securities that it may later authorize or issue and that by their terms are on a parity with the Series A Preferred Stock. The Series A Preferred Stock will rank junior with any equity securities that the Corporation may later authorize or issue and that by their terms rank senior to the Series A Preferred Stock. In order for the Corporation to authorize or issue equity securities that rank senior to the Series A Preferred Stock, the Corporation must receive the approval of the holders of at least fifty percent (50%) of the outstanding shares of the Series A Preferred Stock, other than The Prudential Insurance Company of America ("Prudential") or its affiliates. Any convertible debt securities which the Corporation may issue are not considered to be equity securities for ranking purposes.

6.3 Dividend Rights. Subject to the provisions of this Section 6.2, with respect to each share of Series A Preferred Stock, the holder of such share shall be entitled to cash dividends on a cumulative basis at the annual rate of fifteen percent (15%) of the Liquidation Value, payable semiannually on June 30 and December 31 of each year. Dividends on the Series A Preferred Stock will accrue and be cumulative from (but excluding) the date of original issue. No dividends shall be paid or set apart for payment on the Common Stock or other shares that rank on a parity with the Series A Preferred Stock, no distribution shall be made on the Common Stock or other shares that rank on a parity with the Series A Preferred Stock and no shares of Common Stock or other junior shares shall be redeemed, retired or otherwise acquired for value unless (i) full cumulative dividends on the Series A Preferred Stock for all past years have been declared and paid or unless funds have been set aside therefore until legally permissible for declaration and payment in accordance with the provisions hereof, (ii) dividends for the current year have been declared and paid or unless funds have been set aside therefore until legally permissible for declaration and payment in accordance with the provisions hereof, and (iii) the ability of the Corporation to pay the Liquidation Value and the Redemption Premium is not impaired thereby. In the event the Corporation does not declare and either pays or sets aside for payment the full cumulative dividends on the Series A Preferred Stock and all shares that rank on a parity with the Series A Preferred Stock, the amount which the Corporation has declared will be allocated pro rata to the Series A Preferred Stock and to each parity series of shares. As a result, the amount declared for each share of Series A Preferred Stock and for each share of each parity series would be proportionate to the accrued and unpaid dividends on those shares.

(a) If and as declared by the Board of Directors, the dividends shall be declared to holders of the Series A Preferred Stock of record as they appear in its share records at the close of business only as of June 1 and December 1 of each year.

(b) During the calendar year of the initial issuance of each share of Series A Preferred Stock, the dividends shall be calculated with respect to such shares on a pro rata basis, based on the actual number of days elapsed from the date of issuance through December 31 of such year, divided by 365, and shall be payable as provided above. Dividends payable on the Series A Preferred Stock for partial periods will be computed on the basis of a 360 day year consisting of twelve 30-day months.

(c) If the aggregate of the dividends declared for any given year would result in less than fifteen percent (15%) of such Liquidation Value per share of Series A Preferred Stock,

each holder of Series A Preferred Stock shall be entitled to receive a pro rata share of the aggregate of the dividends declared.

(d) Dividends will accrue whether or not the Corporation has any earnings, whether or not there are funds legally available for the payment of dividends and whether or not dividends are authorized. Accrued but unpaid dividends will not bear interest, and holders of the Series A Preferred Stock will not be entitled to any dividends in excess of full cumulative dividends. All of the Corporation's dividends on the Series A Preferred Stock will be credited to the cumulative dividends on the Series A Preferred Stock. The Corporation will credit any dividend made on the Series A Preferred Stock first to the earliest accrued and unpaid dividend due.

6.4 Liquidation Rights. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, or of any reduction in the capital of the Corporation resulting in any distribution of assets to its stockholders, with respect to each share of Series A Preferred Stock, the holder of such share shall be entitled to receive liquidating distributions in cash or property at its fair market value determined by the Board of Directors equal to the liquidation value of \$1,000 per share, plus any accrued and unpaid dividends through and including the date of payment and plus the applicable Redemption Premium prior to any payments to holders of Common Stock. The holders of the Series A Preferred Stock will be entitled to receive this Liquidation Value prior to any distribution of any assets to the holders of the Common Stock or any shares that rank junior to the Series A Preferred Stock. In the event that assets are not available to pay each stockholder in full, the holders of Series A Preferred Stock shall be entitled to receive a pro rata share of the assets available to pay stockholders in preference to the holders of Common Stock or any other shares that rank junior to the Series A Preferred Stock. The rights of holders of Series A Preferred Stock to receive the Liquidation Value is subject to preferential rights of the holders of any series of shares which is senior to the Series A Preferred Stock. After payment of the full amount of the Liquidation Value to which such holders are entitled, the holders of the Series A Preferred Stock will have no right or claim to any of the Corporation's remaining assets. If the Corporation consolidates or merges with any other entity, sells, leases, transfers or conveys all or substantially all of its property or business, or engages in a statutory share exchange or engages in any like-kind exchanges in accordance with the Code, the Corporation will not be deemed to have been liquidated.

6.5 Redemption Rights. Each share of Series A Preferred Stock shall be redeemable by the Corporation upon not less than 15 days' written notice to the holder thereof, at which time the Corporation shall pay a redemption price of \$1,000 per share, plus accrued and unpaid dividends through the date fixed for redemption and plus the applicable Redemption Premium prior to any payments to holders of Common Stock or to holders of any shares that rank junior to the Series A Preferred Stock. Subject to the provisions and limitations contained in these Amended and Restated Articles of Incorporation, the Board of Directors shall have full power and authority to prescribe the timing in which the Series A Preferred Stock shall from time to time be redeemable, in whole or in part. On or after the date of redemption specified in the notice, which shall be made by mail to each holder of record of the Series A Preferred Stock at the address shown on the share transfer books of the Corporation, each holder of the Series A Preferred Stock called for redemption shall be entitled to receive for the Series A Preferred Stock

called for redemption the Redemption Price of such stock, upon presentation and surrender at the place and manner designated in the notice of the certificate or certificates for the Series A Preferred Stock held by the holder, properly endorsed in blank for transfer or accompanied by proper instruments of assignment in blank and bearing all necessary stock transfer stamps affixed and canceled. A failure to provide notice of redemption or any defect in the notice or its mailing will not affect the validity of any Series A Preferred Stock except as to the holder to whom notice was defective. Each notice will state the following:

- the redemption date;
- the redemption price;
- the number of shares of Series A Preferred Stock to be redeemed
- the place or places where the certificates for the Series A Preferred Stock are to be surrendered for payment; and
- that dividends on the Series A Preferred Stock to be redeemed will cease to accrue on the redemption date.

(a) If the Corporation redeems fewer than all of the Series A Preferred Stock, the notice of the redemption mailed to each shareholder will also specify the number of Series A Preferred Stock that will be redeemed from each shareholder. If only a portion of the Series A Preferred Stock then outstanding is to be redeemed at any given time, the Corporation will select the shares to be redeemed, by lot, pro rata, or in individual shares, in whatever manner the Board of Directors determines.

(b) If notice of a redemption has been given and sufficient funds have been set aside for the redemption in trust for the benefit of the holders of the Series A Preferred Stock called for redemption, then from and after the redemption date, those shares of Series A Preferred Stock will be treated as no longer being outstanding, no further dividends will accrue and all other rights of the holders of those shares of Series A Preferred Stock will terminate. The holders of those shares of Series A Preferred Stock will retain their right to receive the redemption price for their shares and any accrued and unpaid dividends through the redemption date.

6.6 No Voting Rights. The holders of shares of the Series A Preferred Stock shall not have the right to notice of shareholders meetings and shall have no vote at shareholders meetings; except (i) so long as any shares of the Series A Preferred Stock shall be outstanding, the Corporation shall not, without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least fifty percent (50%) of the shares of the Series A Preferred Stock, other than Prudential or its affiliates, alter or change the powers, designations, preferences and other rights and qualifications, limitations or restrictions of the shares of the Series A Preferred Stock so as to adversely affect the holders of the Series A Preferred Stock, except as required to maintain its status as a REIT (as defined in Section 7.1) or (ii) as otherwise provided by law.

In any matter in which the Series A Preferred Stock is entitled to vote, each share of Series A Preferred Stock will be entitled to one vote. If the holders of the Series A Preferred Stock and another series of preferred shares are entitled to vote together as a single class on any

matter, the Series A Preferred Stock and the shares of the other series will have one vote for each \$1,000 of liquidation preference.

6.7 Transferability. The Series A Preferred Stock is freely transferable except as provided in Article 7, which relates to the requirements for real estate investment trusts.

6.8 No Pre-Emptive Rights. No holder of any of the shares of the Series A Preferred Stock of the Corporation shall be entitled as of right to subscribe for, purchase, or otherwise acquire any shares of any class of the Corporation which the Corporation proposes to issue or any rights or options which the Corporation proposes to grant for the purchase of shares of any class of the Corporation or for the purchase of any shares, bonds, securities, or obligations of the Corporation which are convertible into or exchangeable for, or which carry any rights to subscribe for, purchase, or otherwise acquire shares of any class of the Corporation; and any and all of such shares, bonds, securities, or obligations of the Corporation, whether now or hereafter authorized or created, may be issued, or may be reissued if the same have been reacquired and if their reissue is not prohibited, and any and all of such rights and options may be granted by the Board of Directors to such individuals and entities, and for such lawful consideration, and on such terms, as the Board of Directors in its discretion may determine, without first offering the same, or any thereof, to any said holder.

6.9 Other Rights. The holders of shares of the Series A Preferred Stock shall have no subscription, conversion or registration rights.

SEVENTH: Restrictions.

7.1 Definitions. The following terms have the following meanings:

“Beneficial Ownership” means ownership of Equity Stock by an Individual who (i) either would own such shares directly or would have beneficial ownership under a nominee or custodial arrangement (in either case without taking into account the application of Section 544 of the Code, as modified by Section 856(h)(1)(B)) or (ii) would be treated as the indirect or constructive owner of such shares through the application of Section 856(h)(3)(A)(i) of the Code or Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code. The terms Beneficial Owner, Beneficially Owns, and Beneficially Owned have correlative meanings.

“Beneficiary” means, with respect to any Trust, one or more organizations described in each of Section 170(b)(1)(A) and Section 170(c) of the Code that are named by the Corporation as the beneficiary or beneficiaries of such Trust, in accordance with the provisions of Section 7.8(a) hereof.

“Board of Directors” means the Board of Directors of the Corporation.

“Closing Price” on any date means with respect to the Equity Stock the last sale price, regular way, or in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, in either case as reported in the principal consolidated transaction reporting system with respect to securities listed or admitted to trading on the New York Stock

Exchange or, if the Equity Stock is not listed or admitted to trading on the New York Stock Exchange, as reported in the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which the Equity Stock is listed or admitted to trading or, if the Equity Stock is not listed or admitted to trading on any national securities exchange, the last quoted price, or if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or, if such system is no longer in use, such other reliable automated quotations system as is selected by the Corporation, or, if the Equity Stock is not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in the Equity Stock selected by the Corporation or, if there is no such professional market maker, such amount as an independent investment banking firm selected by the Corporation determines to be the value of a share of Equity Stock.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Equity Stock” means, as of any particular time, all of the outstanding shares of Common Stock and Preferred Stock, including all shares of Common Stock and Preferred Stock that are held as Shares-in-Trust at such time in accordance with the provisions of Section 7.8 hereof.

“Individual” means any natural person and any entity that is included in the definition of individual in Section 542(a)(2) of the Code, but does not include a pension trust described in Section 401(a) of the Code which qualifies for lookthrough treatment under Section 856(h)(3)(A)(i) of the Code.

“Market Price” on any date means the average of the Closing Price for the ten consecutive Trading Days ending on such date.

“Ownership Limit” means, with respect to each class of Equity Stock of the Corporation outstanding as of any particular time, nine and eight-tenths percent (9.8%) of the total number of shares of such class of Equity Stock.

“Non-Transfer Event” means an event, other than a purported Transfer, that would cause (i) any Individual to Beneficially Own shares of Equity Stock in excess of the Ownership Limit, (ii) the Corporation to become closely held within the meaning of Section 856(h) of the Code and/or (iii) the Corporation to otherwise fail to qualify as a REIT (other than as a result of a violation of the 100-shareholder requirements of Section 856(a)(5) of the Code); in each case including, but not limited to, the granting of any option or entering into any agreement for the sale, transfer or other disposition of Equity Stock or the sale, transfer, assignment or other disposition of any securities or rights convertible into or exchangeable for Equity Stock.

“Permitted Transferee” means any Person designated as a Permitted Transferee in accordance with the provisions of Section 7.8(e) hereof.

“Person” means an individual, corporation, limited liability company, partnership, estate, trust, association, joint stock company, government or agency or political subdivision thereof, charitable organization, or other entity.

“Prohibited Owner” means, with respect to any purported Transfer or Non-Transfer Event, any Person who, but for the provisions of Section 7.3 hereof, would own record title to shares of Equity Stock.

“REIT” means a real estate investment trust as defined in Section 856 of the Code.

“Restriction Termination Date” means the date on which the Board of Directors and the shareholders of the Corporation determine that it is no longer in the best interests of the Corporation to attempt to, or continue to, qualify as a REIT.

“Trading Day” means a day on which the principal national securities exchange on which the Equity Stock is listed or admitted to trading is open for the transaction of business or, if the Equity Stock is not listed or admitted to trading on any national securities exchange, means any day other than a Saturday, a Sunday, or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

“Transfer” means any sale, transfer, gift, assignment, devise or other disposition of Equity Stock, whether voluntary or involuntary, whether of record, constructively or beneficially and whether by operation of law or otherwise.

“Trust” means any separate trust created pursuant to Section 7.3 hereof and administered in accordance with the terms of Section 7.8 hereof, for the exclusive benefit of any Beneficiary.

“Trustee” means any person or entity unaffiliated with both the Corporation and any Prohibited Owner, such Trustee to be designated by the Corporation to act as trustee of any Trust, or any successor trustee thereof.

7.2 Restrictions on Transfers.

(a) Except as provided in Section 7.7 hereof, from the date of the issuance of the Preferred Stock and prior to the Restriction Termination Date, no Individual shall Beneficially Own shares of the outstanding Equity Stock in excess of the Ownership Limit.

(b) Except as provided in Section 7.7 hereof, from the date of the issuance of the Preferred Stock and prior to the Restriction Termination Date, any Transfer that, if effective, would result in any Individual Beneficially Owning Equity Stock in excess of the Ownership Limit shall be void ab initio as to the Transfer of that number of shares of Equity Stock that would be otherwise Beneficially Owned by such Individual in excess of the Ownership Limit; and the intended transferee shall acquire no rights in such excess shares of Equity Stock.

(c) Notwithstanding any other provision herein, from the date of the issuance of the Preferred Stock and prior to the Restriction Termination Date, any Transfer that, if effective, would result in the Equity Stock being directly or indirectly owned by fewer than 100 Persons (determined without reference to any constructive ownership rules) shall be void ab initio in its entirety; and the intended transferee shall acquire no rights in any of such shares of Equity Stock intended to be transferred.

(d) Notwithstanding any other provision herein, from the date of the issuance of the Preferred Stock and prior to the Restriction Termination Date, any Transfer of shares of Equity Stock 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 that number of shares of Equity Stock that 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 excess shares of Equity Stock.

(e) Notwithstanding any other provision herein, from the date of the issuance of the Preferred Stock and prior to the Restriction Termination Date, any Transfer of shares of Equity Stock that, if effective, would cause the Corporation to fail to qualify as a REIT shall be void ab initio as to the Transfer of that number of shares of Equity Stock in excess of the number that could have been Transferred without such result; and the intended transferee shall acquire no rights in such excess shares of Equity Stock.

7.3 Transfer in Trust.

(a) If, notwithstanding the other provisions contained in this Article 7, at any time after the date of the issuance of the Preferred Stock and prior to the Restriction Termination Date, there is a purported Transfer or Non-Transfer Event such that any Individual would Beneficially Own Equity Stock in excess of the Ownership Limit, then, (i) except as otherwise provided in Section 7.7, the purported transferee shall acquire no right or interest (or, in the case of a Non-Transfer Event, the Person holding record title to the Equity Stock Beneficially Owned by such Beneficial Owner shall cease to own any right or interest) in such number of shares of Equity Stock that would cause such Beneficial Owner to Beneficially Own shares of Equity Stock in excess of the Ownership Limit; and (ii) such number of shares of Equity Stock in excess of the Ownership Limit (rounded up to the nearest whole share) shall be designated Shares-in-Trust and, in accordance with Section 7.8 hereof, transferred automatically and by operation of law to a Trust. Such transfer to a Trust and the designation of the shares as Shares-in-Trust shall be effective as of the close of business on the business day prior to the date of the purported Transfer or Non-Transfer Event, as the case may be.

(b) If, notwithstanding the other provisions contained in this Article 7, at any time after the date of the issuance of the Preferred Stock and prior to the Restriction Termination Date, there is a purported Transfer or Non-Transfer Event that, if effective, would cause the Corporation to become closely held within the meaning of Section 856(h) of the Code or to otherwise fail to qualify as a REIT (other than as a result of a violation of the 100-shareholder requirement of Section 856(a)(5) of the Code), then (i) the purported transferee shall not acquire any right or interest (or, in the case of a Non-Transfer Event, the Person holding record title to

the Equity Stock with respect to which such Non-Transfer Event occurred shall cease to own any right or interest) in such number of shares of Equity Stock, the ownership of which by such purported transferee or record holder would cause the Corporation to be closely held within the meaning of Section 856(h) of the Code or to otherwise fail to qualify as a REIT (other than as a result of a violation of the 100-shareholder requirement of Section 856(a)(5) of the Code); and (ii) such number of shares of Equity Stock (rounded up to the nearest whole share) shall be designated Shares-in-Trust and, in accordance with the provisions of Section 7.8 hereof, transferred automatically and by operation of law to the Trust to be held in accordance with that Section 7.8. Such transfer to a Trust and the Designation of shares as Shares-in-Trust shall be effective as of the close of business on the business day prior to the date of the purported Transfer or Non-Transfer Event, as the case may be.

7.4 Remedies for Breach. If the Corporation or its designees shall at any time determine in good faith that a Transfer has taken place in violation of Section 7.2 hereof, or that an Individual intends to acquire or has attempted to acquire Beneficial Ownership of any shares of Equity Stock in violation of Section 7.2 hereof, the Corporation shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or acquisition, 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 or acquisition.

7.5 Notice of Transfer. Any Person who acquires or attempts to acquire shares of Equity Stock in violation of Section 7.2 hereof, or any Person who owned shares of Equity Stock that were transferred to the Trust pursuant to the provisions of Section 7.3 hereof, shall immediately give written notice to the Corporation of such event and shall provide to the Corporation such other information as the Corporation may request in order to determine the effect, if any, of such Transfer or the Non-Transfer Event, as the case may be, on the Corporation's status as a REIT. Any other Transfer shall require written notification within thirty days after such Transfer.

7.6 Owners Required to Provide Information. From the date of the issuance of the Preferred Stock and prior to the Restriction Termination Date:

(a) Every shareholder of record owning one-half of one percent or more of the outstanding Equity Stock shall, within a reasonable period following a written request from the Company, give written notice to the Corporation stating the name and address of such record owner, the actual owners of such Equity Stock, and such information regarding the Beneficial Owners of such Equity Stock as the Corporation shall request in order to determine the effect, if any, of such Beneficial Ownership on the Corporation's status as a REIT and to ensure compliance with the Ownership Limit.

(b) Each Individual that Beneficially Owns Equity Stock and each Person (including the shareholder of record) through whom an Individual Beneficially Owns Equity Stock shall provide the Corporation such information as the Corporation may request in order to determine the Corporation's status as a REIT, to ensure compliance with the Ownership Limit, and to determine whether the Corporation is a pension-held REIT within the meaning of Section 865(h)(3)(D) of the Code.

7.7 Exception. The restrictions on ownership and transfers set forth in Sections 7.2(a), 7.2(b), and 7.3(a) hereof shall not apply to the acquisition of shares of Equity Stock of the Corporation by an underwriter in a public offering of those shares or in any transaction involving the issuance of shares of Equity Stock by the Corporation in which the Board of Directors determines that the underwriter or other Person initially acquiring those shares will timely distribute those shares to or among others so that, following such distribution, the ownership of those shares will not be in violation of Section 7.2 hereof. The Board of Directors, in the exercise of its sole and absolute discretion, may exempt from the operation of this Article 7 certain specified shares of Equity Stock which are Beneficially Owned by any Person which it deems appropriate. The Board of Directors, in the exercise of its sole and absolute discretion, may also exempt from the operation of Sections 7.2(a), 7.2(b), and 7.3(a) hereof certain specified shares of Equity Stock of the Corporation proposed to be transferred to, and/or Beneficially Owned by, a Person who has provided the Board of Directors with such evidence, undertakings and assurances as the Board of Directors may require that such Transfer to, and/or Beneficial Ownership by, such Person of the specified shares will not prevent the continued qualification of the Corporation as a REIT under the Code and the regulations thereunder. The Board of Directors may, but shall not be required to, condition the grant of any such exemption upon the obtaining of an opinion of counsel, a ruling from the Internal Revenue Service, or such other assurances as the Board of Directors may deem to be satisfactory.

7.8 Shares-in-Trust.

(a) **Trust.** Any shares of Equity Stock transferred to a Trust and designated Shares-in-Trust pursuant to Section 7.3 of this Article 7 shall be held for the exclusive benefit of the Beneficiary. The Corporation shall name a beneficiary of each Trust within five (5) days after discovery of the existence thereof. Any transfer to a Trust, and subsequent designation of shares of Equity Stock as Shares-in-Trust, pursuant to Section 7.3 of this Article 7 shall be effective as of the close of business on the business day prior to the date of the Transfer or Non-Transfer Event that results in the transfer to the Trust. Shares-in-Trust shall remain issued and outstanding shares of Equity Stock of the Corporation and shall be entitled to the same rights and privileges on identical terms and conditions as are all other issued and outstanding shares of Equity Stock of the same class and series. When transferred to the Permitted Transferee in accordance with the provisions of Section 7.8(e) of this Article 7, such Shares-in-Trust shall cease to be designated as Shares-in-Trust.

(b) **Dividend Rights.** The Trustee, as record holder of Shares-in-Trust, shall be entitled to receive all dividends and distributions as may be declared by the Board of Directors of the Corporation on such shares of Equity Stock and shall hold such dividends or distributions in trust for the benefit of the Beneficiary. The Prohibited Owner with respect to Shares-in-Trust shall repay to the Trustee the amount of any dividends or distributions received by it that (i) are attributable to any shares of Equity Stock designated Shares-in-Trust and (ii) the record date of which is on or after the date that such shares became Shares-in-Trust. The Corporation shall take all measures that it determines reasonably necessary to recover the amount of any such dividend or distribution paid to a Prohibited Owner, including, if necessary, withholding any portion of future dividends or distributions payable on shares of Equity Stock Beneficially Owned by the

Individual who, but for the provisions of Section 7.3 hereof, would Beneficially Own the Shares-in-Trust; and, as soon as reasonably practicable following the Corporation's receipt or withholding thereof, shall pay over to the Trustee for the benefit of the Beneficiary the dividends so received or withheld, as the case may be.

(c) Rights Upon Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of, or any distribution of the assets of, the Corporation, each Trustee of Shares-in-Trust shall be entitled to receive, ratably with each other holder of Equity Stock of the same class or series, that portion of the assets of the Corporation that is available for distribution to the holders of such class and series of Equity Stock. The Trustee shall distribute to the Prohibited Owner the amounts received upon such liquidation, dissolution, or winding up, or distribution; provided, however, that the Prohibited Owner shall not be entitled to receive amounts pursuant to this Section 7.8(c) in excess of, in the case of a purported Transfer in which the Prohibited Owner gave value for shares of Equity Stock and which Transfer resulted in the transfer of the shares to the Trust, the price per share, if any, such Prohibited Owner paid for the Equity Stock and, in the case of a Non-Transfer Event or Transfer in which the Prohibited Owner did not give value for such shares (e.g., if the shares were received through a gift or devise) and which Non-Transfer Event or Transfer, as the case may be, resulted in the transfer of shares to the Trust, the price per share equal to the Market Price on the date of such Non-Transfer Event or Transfer. Any remaining amount in such Trust shall be distributed to the Beneficiary.

(d) Voting Rights. The Trustee shall be entitled to exercise all voting rights with respect to all Shares-in-Trust. Any vote by a Prohibited Owner as a holder of shares of Equity Stock prior to the discovery by the Corporation that the shares of Equity Stock are Shares-in-Trust shall, subject to applicable law and only to the extent that no Person other than the Corporation and/or the Prohibited Owner is materially and adversely affected, be rescinded and shall be void ab initio with respect to such Share-in-Trust and the Prohibited Owner shall be deemed to have given, as of the close of business on the business day prior to the date of the purported Transfer or Non-Transfer Event that results in the transfer to the Trust of the shares of Equity Stock under Section 7.3 hereof, an irrevocable proxy to the Trustee to vote the Shares-in-Trust in the manner in which the Trustee, in its sole and absolute discretion, desires.

(e) Designation of Permitted Transferee. The Trustee shall have the exclusive and absolute right to designate a Permitted Transferee of any and all Shares-in-Trust. As soon as reasonably practicable, in an orderly fashion so as not to materially adversely affect the Market Price of the Shares-in-Trust, the Trustee shall designate any Person as Permitted Transferee, provided, however, that (i) the Permitted Transferee so designated purchases for valuable consideration (whether in a public or private sale) the Shares-in-Trust and (ii) the Permitted Transferee so designated may acquire such Shares-in-Trust without such acquisition resulting in a transfer to a Trust and the redesignation of such shares of the Equity Stock so acquired as Shares-in-Trust under Section 7.3 hereof. Upon the designation by the Trustee of a Permitted Transferee in accordance with the provisions of this paragraph, the Trustee of a Trust shall (i) cause to be transferred to the Permitted Transferee that number of Shares-in-Trust acquired by the Permitted Transferee; (ii) cause to be recorded on the books of the Corporation that the Permitted Transferee is the holder of record of such number of shares of Equity Stock; and (iii)

distribute to the Beneficiary any and all amounts held with respect to the Shares-in-Trust after making that payment to the Prohibited Owner pursuant to Section 7.8(f) hereof.

(f) Compensation to Record Holder of Shares of Equity Stock that Become Shares-in-Trust. Any Prohibited Owner shall be entitled (following discovery of the Shares-in-Trust and subsequent designation of the Permitted Transferee in accordance with Section 7.8 hereof) to receive from the Trustee the lesser of (i) in the case of (a) a purported Transfer in which the Prohibited Owner gave value for shares of Equity Stock and which Transfer resulted in the transfer of the shares to the Trust, the price per share, if any, such Prohibited Owner paid for the Equity Stock, or (b) a Non-Transfer Event or Transfer in which the Prohibited Owner did not give value for such shares (e.g., if the shares were received through a gift or devise) and which Non-Transfer Event or Transfer, as the case may be, resulted in the transfer of the shares to the Trust, the price per share equal to the Market Price on the date of such Non-Transfer Event or Transfer, and (ii) the price per share received by the Trustee of the Trust from the sale or other disposition of such Shares-in-Trust in accordance with Section 7.8(e) hereof. Any amounts received by the Trustee in respect of such Shares-in-Trust in excess of such amounts to be paid the Prohibited Owner pursuant to this Section 7.8(f) hereof shall be distributed to the Beneficiary in accordance with the provisions of Section 7.8(e) hereof. Each Beneficiary and Prohibited Owner waives any and all claims that they may have against the Trustee and the Corporation arising out of the disposition of Shares-in-Trust, except for claims arising out of the gross negligence or willful misconduct of, or any failure to make payments in accordance with this Section 7.8 by, such Trustee or the Corporation.

(g) Purchase Right in Shares-in-Trust. Shares-in-Trust shall be deemed to have been offered for sale to the Corporation, or its designee, at a price per share equal to the lesser of (i) the price per share in the transaction that created such Shares-in-Trust (or, in the case of devise, gift or Non-Transfer Event, the Market Price at the time of such devise, gift or Non-Transfer Event) and (ii) the Market Price on the date the Corporation, or its designee, accepts such offer. The Corporation shall have the right to accept such offer for a period of ninety days after the later of (i) the date of the Non-Transfer Event or purported Transfer that resulted in such Shares-in-Trust and (ii) the date the Corporation determines in good faith that a Transfer or Non-Transfer Event resulting in Shares-in-Trust has occurred, if the Corporation does not receive a notice of such Transfer or Non-Transfer Event pursuant to Section 7.5 hereof.

7.9 Remedies Not Limited. Nothing contained in this Article 7 shall limit the authority of the Corporation 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 REIT and to ensure compliance with the Ownership Limit.

7.10 Ambiguity. In the case of an ambiguity in the application of any of the provisions of this Article 7, including any definition contained in Section 7.1, the Board of Directors shall have the power to determine, in good faith, the application of the provisions of this Article 7 with respect to any situation, based on the facts known to it.

7.11 Legend. Each certificate for Equity Stock shall bear the following legend:

"THE SHARES OF [COMMON/PREFERRED] STOCK REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER FOR THE PURPOSE OF THE CORPORATION'S MAINTENANCE OF ITS STATUS AS A REAL ESTATE INVESTMENT TRUST (A "REIT") UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"). NO INDIVIDUAL MAY AT ANY TIME (1) BENEFICIALLY OWN SHARES OF ANY CLASS OF EQUITY STOCK IN EXCESS OF 9.8% OF THE TOTAL NUMBER OF SHARES OF SUCH CLASS OF EQUITY STOCK OUTSTANDING AS OF SUCH TIME; OR (2) BENEFICIALLY OWN EQUITY STOCK THAT WOULD RESULT IN THE CORPORATION BEING CLOSELY HELD UNDER SECTION 856(H) OF THE CODE OR OTHERWISE FAILING TO QUALIFY AS A REIT. ANY INDIVIDUAL WHO ATTEMPTS TO BENEFICIALLY OWN SHARES OF EQUITY STOCK IN EXCESS OF THE ABOVE LIMITATIONS MUST IMMEDIATELY NOTIFY THE CORPORATION IN WRITING. IF THE RESTRICTIONS ABOVE ARE VIOLATED, THE SHARES OF EQUITY STOCK REPRESENTED HEREBY WILL BE TRANSFERRED AUTOMATICALLY AND BY OPERATION OF LAW TO A TRUST AND SHALL BE DESIGNATED SHARES-IN-TRUST. ANY TRANSFER THAT WOULD RESULT IN THE EQUITY STOCK OF THE CORPORATION BEING OWNED BY FEWER THAN 100 PERSONS (DETERMINED WITHOUT REFERENCE TO ANY CONSTRUCTIVE OWNERSHIP RULES) SHALL BE VOID AB INITIO IN ITS ENTIRETY. ALL CAPITALIZED TERMS IN THIS LEGEND HAVE THE MEANINGS DEFINED IN THE CORPORATION'S AMENDED AND RESTATED ARTICLES OF INCORPORATION, AS THE SAME MAY BE AMENDED FROM TIME TO TIME, A COPY OF WHICH, INCLUDING THE RESTRICTIONS ON TRANSFER, WILL BE SENT WITHOUT CHARGE TO EACH SHAREHOLDER WHO SO REQUESTS.

7.12 Severability. If any provision of this Article 7 or any application of any such provision is determined to be invalid by any federal or state court having jurisdiction over the issues, the validity of the remaining provisions shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court.

7.13 Enforcement. The Corporation is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this Article 7.

EIGHTH: Registered Office and Agent. The street address of the registered office of the Corporation in the state of Florida is c/o Corporation Service Company, 1201 Hays Street, Tallahassee, Florida 32301. The name of the registered agent of the Corporation at the said registered office is Corporation Service Company.

NINTH: **Board of Directors.** The business and affairs of this Corporation shall be managed by or under the direction of the Board of Directors. The number of such Directors shall be not less than one (1) and, subject to such minimum may be increased or decreased from time to time in the manner provided in the Bylaws. The Directors need not be elected by ballot unless required by the Bylaws of the Corporation

TENTH: **Indemnification of Officers, Directors, Employees and Agents.**
The Corporation shall, to the fullest extent permitted by the provisions of the Florida Business Corporation Act, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said provisions from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said provisions, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, vote of shareholders or disinterested Directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

ELEVENTH: **Limitation on Director Liability.** The Directors of the Corporation shall incur no personal liability to the Corporation or its shareholders for monetary

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damages for any statement, vote, decision, or failure to act, regarding corporate management or policy by a Director; provided, however, that the Directors of the Corporation shall continue to be subject to liability for (i) breach of or failure to perform his or her duties as a Director; and (ii) the Director's breach of, or failure to perform those duties constitutes: a violation of the criminal law, unless the Director had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful; a transaction from which the Director derived an improper personal benefit, directly or indirectly; a circumstance under which the liability of provisions Section 607.0834 of the Florida Business Corporation Act are applicable, (unlawful distributions); conscious disregard for the best interest of the Corporation or willful misconduct in a proceeding by or in the right of the Corporation to procure a judgment in its favor or by or in the right of a shareholder; or recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety or property in a proceeding by or in the right of someone other than the Corporation or a shareholder.

TWELFTH: **General.** Meetings of the shareholders shall be held in such places as shall be designated by the Board of Directors or in the Bylaws of the Corporation. The books of the Corporation will be kept at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

THIRTEENTH: **Additional Limitation on Powers.** Unless approved by a vote of a majority of holders of Common Stock, the Corporation shall have no power and may not be authorized by its shareholders or Directors to perform or fail to perform any act that would prevent or inhibit the Corporation from qualifying and maintaining, or cause the Corporation to lose its status, as a real estate investment trust under Section 856 of the Internal Revenue Code of 1986, as amended.

FOURTEENTH: **Amendment, Miscellaneous.** The Corporation reserves the right, subject to Section 6.6, to amend, alter, change or repeal any provision contained in these Amended and Restated Articles of Incorporation, in the manner now or hereafter prescribed by law, and all rights conferred upon the shareholders, Directors or any other persons by and pursuant to these Amended and Restated Articles of Incorporation, in their present form or as hereafter amended, are granted subject to this reservation. The section headings set forth herein are for convenience or reference only and shall not be used in interpreting these Amended and Restated Articles of Incorporation.

FIFTEENTH: **Duration.** The duration of the Corporation shall be perpetual.

Signed on July 27, 2001


Name: J. Allen Smith
Title: Treasurer

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ACCEPTANCE OF REGISTERED AGENT

Having been named to accept service of process for the COURTS AT BRICKELL, INC., at the place designated in the Articles of Incorporation, the undersigned is familiar with and accepts the obligations of that position pursuant to F.S. 607.0501(3).

By: Laura R. Dunlap
Corporation Service Company
Its Agent, Laura R. Dunlap

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