

JAN-13-98 TUE 02:45 PM MCGUIRE WOODS LLP

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FROM: MCGUIRE, WOODS, BATTLE & BOOTHE LLP  
CONTACT: LINDA A QUINE  
PHONE: (904)354-1100

ACCT#: 071075000166

FAX #: (904)798-2697

NAME: BARNETT REAL ESTATE MANAGEMENT, INC.  
AUDIT NUMBER.....H98000000783  
DOC TYPE.....BASIC AMENDMENT  
CERT. OF STATUS..0  
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PAGES..... 16  
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*Amended  
&  
Restated  
Articles  
1/15/98*

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P. 02/18

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(904)822-3709 01/14/98 10:50 Florida Department of State

P. 01/18



FLORIDA DEPARTMENT OF STATE  
Sandra B. Mortham  
Secretary of State

January 14, 1998

BARNETT REAL ESTATE MANAGEMENT, INC.  
50 N LAURA ST  
ATT REGULATORY RELATIONS  
JACKSONVILLE, FL 32202US

SUBJECT: BARNETT REAL ESTATE MANAGEMENT, INC.  
REF: P97000000784

We received your electronically transmitted document. However, the document has not been filed. Please make the following corrections and refax the complete document, including the electronic filing cover sheet.

The date of adoption of each amendment must be included in the document.

The document must contain written acceptance by the registered agent, (i.e. "I hereby am familiar with and accept the duties and responsibilities as registered agent for said corporation/limited liability company"); and the registered agent's signature.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 487-6906.

Darlene Connell  
Corporate Specialist

FAX Aud. #: E98000000783  
Letter Number: 998A00002097

Division of Corporations - P.O. BOX 6327 - Tallahassee, Florida 32314

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**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
BARNETT REAL ESTATE MANAGEMENT, INC.**

The above corporation (the "Corporation") existing pursuant to the Florida Business Corporation Act, desiring to give notice of corporate action effectuating the restatement of its Amended and Restated Articles of Incorporation, sets forth the following facts:

1. The name of the Corporation is BARNETT REAL ESTATE MANAGEMENT, INC.

2. The Articles of Incorporation of Barnett Real Estate Management, Inc. filed with the Secretary of State of the State of Florida, effective December 12, 1996, as previously amended and restated, are hereby amended and restated in their entirety pursuant to the direction of the Board of Directors and shareholders of the Corporation:

**FIRST  
NAME**

The name of the Corporation is Barnett Real Estate Management, Inc. (the "Corporation").

**SECOND  
REGISTERED OFFICE AND AGENT**

The address of its registered office in the State of Florida is 50 North Laura Street in the City of Jacksonville, County of Duval. The name of its registered agent at such address is Gary W. England.

Prepared by G. Alan Howard, Esq.  
50 North Laura Street  
Jacksonville, FL 32201  
(904) 798-2605  
Florida Bar No. 0629091

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**THIRD**  
**PURPOSE**

The Corporation intends to qualify as a real estate investment trust ("REIT") as defined in Section 856 of the Code (as defined in Section 8.1 hereof). Consistent with that intention, the purpose of the Corporation is to engage in the acquisition, ownership, management and disposition of real estate related assets and other assets in the manner contemplated by these Articles of Incorporation and, in connection therewith, to engage in all lawful acts or activities for which corporations may be organized under the Florida Business Corporation Act of the State of Florida ("FBCA") as the same exists or may hereafter be amended. In no event shall the Corporation be authorized or enabled to engage in any activity which would not be permitted to be undertaken by a subsidiary of a national banking association.

**FOURTH**  
**[RESERVED]**

**FIFTH**  
**CAPITAL STOCK**

**5.1 Authorized Capital**

The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 21,002,500 shares of which (a) 1,000,000 shares shall be shares of voting preferred stock with a par value of \$1,000 per share (hereinafter called the "Preferred Stock"), (b) 1,000 shares of which shall be shares of non-voting preferred stock with a par value of \$1,000 per share (the "Non-Voting Preferred Stock"), (c) 1,500 shares of which shall be shares of non-voting Class B common stock with a par value of \$1,000 per share, and (d) 20,000,000 shares shall be shares of common stock with a par value of \$1,000 per share (hereinafter called the "Common Stock").

Any amendment to these Articles of Incorporation which shall increase or decrease the authorized capital stock of the Corporation may be adopted by the affirmative vote of the holders of capital stock representing not less than a majority of the voting power represented by the outstanding shares of capital stock of the Corporation entitled to vote, subject to the voting rights of holders of Preferred Stock of the Corporation which may be designated from time to time by the Board of Directors of the Corporation.

**5.2 Common Stock**

The designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof, of the Common Stock shall be governed by the following provisions:

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- (a) **Identical Rights.** Except as otherwise provided herein, all shares of Common Stock shall be identical and shall entitle the holders thereof to the same rights and privileges.
- (b) **Voting Rights.** Except as otherwise required by law or as otherwise provided herein, on all matters submitted to the Corporation's stockholders generally, the holders of Common Stock shall be entitled to one vote per share.
- (c) **Dividends.** When and as dividends or other distributions are declared, whether payable in cash, in property or in securities of the Corporation, the holders of shares of Common Stock shall be entitled to share equally, share for share, in such dividends or other distributions, provided that if dividends or other distributions are declared which are payable in shares of Common Stock, such dividends or other distributions shall be declared payable at the same rate for all holders of Common Stock and the dividends payable in shares of Common Stock will be payable to holders of Common Stock. Notwithstanding the foregoing, so long as any shares of Preferred Stock or Non-Voting, Preferred Stock ranking senior to the Common Stock as to dividends are outstanding, no dividends or distributions (including redemptions) may be paid on the Common Stock unless all dividends on such Preferred Stock or Non-Voting Preferred Stock shall have been paid.
- During the Initial Term (as defined in the Corporation's Resolution providing for the issuance of the Preferred Stock), the Company will not, unless approved by the vote of the holders of at least 66 2/3 % of the outstanding shares of Preferred Stock, make any distribution with respect to shares of Common Stock which, if such proposed distribution were included, would result in total distributions by the Company to all of its stockholders for the taxable year exceeding 105% of the Company's "REIT taxable income" as such term is defined in Section 857(b)(2) of the Code, excluding-, however, from the calculation of such amount the deduction for dividends paid under Section 857(b)(2)(B) of the Code, but including any net capital gain for such taxable year, unless the Corporation is, and upon the consummation of such distribution will be, in compliance with the Equity Value Requirement (as defined in such Resolution).
- (d) **Conversion.** The holders of shares of Common Stock shall not have any rights to convert such shares into shares of any other class or series of capital stock of the Corporation.
- (e) **Redemption.** Holders of Common Stock have no redemption or preemptive rights and are not liable for calls or assessments.
- (f) **Liquidation Rights.** In the event of any voluntary or involuntary dissolution, liquidation or winding up of the Corporation, subject to the prior payment in full of all liabilities of the Corporation and any liquidation preference of shares of Preferred Stock and Non-Voting Preferred Stock of the Corporation, the holders of shares of

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Common Stock shall be entitled to share, equally and ratably among all holders of Common Stock, in all remaining assets after payment of such liabilities and preferences. Neither the sale of all or substantially all the property or business of the Corporation, nor the merger or consolidation of the Corporation into or with any other corporation or the merger or consolidation of any other corporation into or with the Corporation, shall be deemed to be a dissolution, liquidation or winding up, voluntary or involuntary, for the purpose of this paragraph (f).

### 5.3 Class B Common Stock

The designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof, of the Class B Common Stock shall be governed by the following provisions:

#### (a) Dividend Rights.

(i) The holders of shares of Class B Common Stock shall be entitled to receive, when and as declared by the Board, out of funds legally available therefor, preferential cash dividends, accruing from the date of issuance, at the annual rate of 8% of the par value of \$1000 per share, and no more, payable annually on December 31 of each year (each of such annual periods being hereinafter referred to as a "dividend period"). Dividends on the Class B Common Stock shall first become payable on December 31, 1998.

(ii) The Corporation shall not (i) declare or pay or set apart for payment any dividends or distributions on any stock ranking as to dividends junior to the Class B Common Stock (other than dividends paid in shares of such junior stock) or (ii) make any purchase or redemption of, or any sinking fund payment for the purchase or redemption of, any stock ranking as to dividends junior to the Class B Common Stock (other than a purchase or redemption made by issue or delivery of such junior stock) unless all dividends payable on all outstanding shares of Class B Common Stock shall have been paid in full or declared and a sufficient sum set apart for payment thereof; provided, however, that any moneys theretofore deposited in any sinking fund with respect to any preferred stock of the Corporation in compliance with the provisions of such sinking fund may thereafter be applied to the purchase or redemption of such preferred stock in accordance with the terms of such sinking fund regardless of whether at the time of such application all dividends payable on all outstanding shares of Class B Common Stock shall have been paid in full or declared and a sufficient sum set apart for payment thereof.

#### (b) Liquidation Preference.

(i) In the event of any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, the holders of Class B Common Stock shall be entitled to receive out of the assets of the Corporation available for distribution to

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shareholders an amount equal to \$1000 per share plus an amount equal to any accrued and unpaid dividends thereon to and including the date of such distribution, and no more, payable on a pro rata basis with any distribution made to the holders of common stock of the Corporation and prior to any distribution to shareholders of any class of stock of the Corporation ranking junior to the Class B Common Stock as to the distribution of assets.

(ii) In the event the assets of the Corporation available for distribution to shareholders upon any liquidation, dissolution or winding up of the affairs of the Corporation, whether voluntary or involuntary, shall be insufficient to pay in full the amounts payable with respect to the Class B Common Stock and any other shares of stock of the Corporation ranking on a parity with the Class B Common Stock as to the distribution of assets, the holders of Class B Common Stock shall share ratably in any distribution of assets of the Corporation in proportion to the full respective amounts to which they are entitled.

(iii) The merger or consolidation of the Corporation into or with any other corporation, the merger or consolidation of any other corporation into or with the Corporation or the sale of the assets of the Corporation substantially as an entirety shall not be deemed a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this Paragraph 3.

(c) **Redemption.** The shares of Class B Common Stock are redeemable at the option of the Corporation.

(d) **Conversion Rights.** The holders of shares of Class B Common Stock shall not have any rights to convert or exchange such shares into shares of any other affiliated corporation.

(e) **Voting Rights.** The Class B Common Stock shall not have any voting powers, either general or special.

(f) **Reacquired Shares.** Shares of Class B Common Stock purchased or acquired by the Corporation shall be restored to the status of authorized but unissued shares of Class B Common Stock without designation as to series.

(g) **No Sinking Fund.** Shares of Class B Common Stock are not subject to the operation of a sinking fund.

#### 5.4 Preferred Stock

The Board of Directors is expressly authorized to provide for the issuance of all or any shares of Preferred Stock and Non-Voting Preferred Stock in one or more classes or series, and to fix for each such class or series such voting powers full or limited, or no voting powers, and such distinctive designations, preferences and relative, participating,

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optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such class or series and as may be permitted by the FBCA, including, without limitation, the authority to provide that any such class or series may be (i) subject to redemption at such time or times and at such price or prices; (ii) entitled to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or any other series; (iii) entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the Corporation; or (iv) convertible into, or exchangeable for, shares of any other class or classes of stock, or of any other series of the same or any other class or classes of stock, of the Corporation at such price or prices or at such rates of exchange and with such adjustments, all as may be stated in such resolution or resolutions.

#### **SIXTH** **MANAGEMENT OF CORPORATION**

The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

- (1) The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.
- (2) The directors shall have concurrent power with the stockholders to make, alter, amend, change, add to or repeal the By-Laws of the Corporation.
- (3) The number of directors of the Corporation shall be as from time to time fixed by, or in the manner provided in, the By-Laws of the Corporation. Election of directors need not be by written ballot unless the By-Laws so provide.
- (4) The holders of a class or series of Preferred Stock may from time to time be entitled to elect one or more directors in the manner prescribed in the Resolution authorizing the issuance of such class or series of Preferred Stock.
- (5) No director shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to the FBCA or (iv) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this Article SIXTH by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the

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time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

(6) In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the FBCA, these Articles of Incorporation, and any By-Laws adopted by the stockholders; provided, however, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such By-Laws had not been adopted.

#### SEVENTH MEETINGS OF STOCKHOLDERS

Meetings of stockholders may be held within or without the State of Florida, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the FBCA) outside the State of Florida at such place or places as may be designated from time to time by the Board of Directors or in the By-Laws of the Corporation.

#### EIGHTH RESTRICTION OF TRANSFER, ACQUISITION AND REDEMPTION OF SHARES

##### 8.1 Definitions

The following terms shall have the following meanings for purposes of these Articles of Incorporation:

"Beneficial Ownership" means ownership of shares of any class or series of Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock by a Person who would be treated as an owner of such shares under Section 542(a)(2) of the Code either directly or constructively through the application of Section 544 of the Code as modified by Sections 856(h)(1)(B) and 856(h)(3)(A) of the Code. The terms "Beneficial Owner," "Beneficially Own" and "Own Beneficially" - shall have correlative meanings.

"Beneficiary" means, with respect to the Trust, one or more organizations named by the Corporation as beneficiary or beneficiaries of the Trust in accordance with Section 8.11(a). Each such Beneficiary shall be an organization described in Section 501(c)(3) of the Code, that is not an "individual" within the meaning of Section 542 of the Code, contributions to which must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code.

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**"Board of Directors"** means the Board of Directors of the Corporation.

**"Code"** means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute thereto. Reference to any provision of the Code shall mean such provision as in effect from time to time, as the same may be amended, and any successor thereto, as interpreted by any applicable regulations or other administrative pronouncements as in effect from time to time.

**"Excess Shares"** has the meaning set forth in Section 8.3.

**"Market Price"**, with respect to the Common Stock, Class B Common Stock, Preferred Stock and Non-Voting Preferred Stock, on any date of determination means the price per share as determined in good faith by the Board of Directors (or any duly authorized committee thereof).

**"Non-Transfer Event"** means any event other than a purported Transfer that would cause (i) the Corporation to become "closely held" within the meaning of Section 856(h) of the Code, and/or (ii) the Corporation to otherwise fail to qualify as a REIT, 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 shares of Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock or the sale, transfer, assignment or other disposition of any securities or rights convertible into or exchangeable for shares of Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock.

**"Permitted Transferee"** means any Person designated as a Permitted Transferee in accordance with the provisions of Section 8.11(e) hereof.

**"Person"** means (a) an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company, limited liability company or other entity and (b) also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.

**"Prohibited Owner"** means, with respect to any purported Transfer or Non-Transfer Event, any Person who, except for the provisions of Section 8.3, would Beneficially own shares of Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock.

**"REIT"** means a Real Estate Investment Trust as defined in Section 856 of the Code.

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"Restriction Termination Date" means the first day after the Initial Term on which the Board of Directors determine that it is no longer in the best interests of the Corporation to attempt to, or continue to, qualify as a REIT.

"Transfer" means any sale, transfer, gift, assignment, devise or other disposition of any shares of Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock (including (i) the granting of any option (including, but not limited to, an option to acquire an option or any series of such options) or entering into any agreement for the sale, transfer or other disposition of Common Stock, Class B Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock or (ii) the sale, transfer, assignment or other disposition of any securities or rights convertible into or exchangeable for Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock or the exercise of such rights), whether voluntary or involuntary, whether of record or beneficially, and whether by operation of law or otherwise (including, but not limited to, any transfer of an interest in other entities which results in a change in the Beneficial Ownership of shares of Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock). The terms "Transfers" and "Transferred" shall have correlative meanings.

"Trust" means the trust created pursuant to Section 8.11.

"Trustee" means any Person or entity unaffiliated with both the Corporation and any Prohibited Owner who is designated by the Corporation to act as trustee of the Trust, and any successor trustee appointed by the Corporation.

## 8.2 Restriction on Ownership and Transfers

(a) Notwithstanding any other provision herein, from and after the date hereof and prior to the Restriction Termination Date, any Transfer that, if effective, would result in the outstanding stock being Beneficially Owned by less than 100 Persons (determined without reference to any rules of attribution) shall be void ab initio, and the intended transferee shall acquire no rights in such shares of stock.

(b) Notwithstanding any other provision herein, from and after the date hereof and prior to the Restriction Termination Date, 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 that number of shares of Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred 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 shares of Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock, as the case may be.

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(c) Notwithstanding any other provision herein, from and after the date hereof and prior to the Restriction Termination Date, any Transfer 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 Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock, as the case may be, in excess of the number that could have been Transferred without such result; and the intended transferee shall acquire no rights in such shares of Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock, as the case may be.

(d) A Transfer of a share of Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock which is null and void under paragraph (a), (b) or (c) of this Section 8.2 shall not adversely affect the validity of the Transfer of any other share of Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock in the same or any other related transaction.

### 8.3 Transfer in Trust

If, notwithstanding the other provisions contained in this Article EIGHTH, at any time 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, then (i) the Prohibited Owner shall acquire no right or interest (or, in the case of a Non-Transfer Event, shall cease to own any right or interest) in such number of shares of Preferred Stock, Non-Voting Preferred Stock or Common 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 and (ii) such number of shares of Preferred Stock, Non-Voting Preferred Stock or Common Stock (rounded up to the nearest whole share) shall be designated as Excess Shares and, in accordance with the provisions of Section 8.11, be transferred automatically and by operation of law to the Trust for the benefit of the Beneficiary. Such transfer to a Trust and the designation of shares as Excess Shares shall be effective as of the close of business on the business day prior to the date of the Transfer or Non-Transfer Event, as the case may be.

### 8.4 Remedies for Breach

If the Board of Directors or a committee thereof shall at any time determine in good faith that a Non-Transfer Event has occurred, a Transfer has taken place in violation of Section 8.2 or a Person intends to acquire or has attempted to acquire or may acquire Beneficial Ownership of any shares of Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock in violation of Section 8.2 (whether or not such violation is intended), the Board of Directors shall be empowered to take any action it deems advisable to refuse to give effect to or to prevent such Transfer or Non-Transfer Event, including, but not limited to, refusing to give effect to such Transfer or Non-Transfer Event

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on the books of the Corporation or instituting proceedings to enjoin or rescind such Transfer or acquisition.

#### 8.5 Notice of Restricted Transfer

Any Person who acquires or attempts to acquire shares of Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock in violation of Section 8.2, or any Person who owned shares of Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock that were transferred to a Trust pursuant to the provisions of Section 8.3, 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 Non-Transfer Event, as the case may be, on the Corporation's status as a REIT. Failure to give such notice shall not in any way limit the rights and remedies of the Board of Directors provided herein.

#### 8.6 Owners Required to Provide Information

From and after the date hereof and prior to the Restriction Termination Date:

(a) Every Beneficial Owner of one-half of 1% or more of any class or series of Preferred Stock, Non-Voting Preferred Stock or Common Stock of the Corporation outstanding shall, within 30 days after December 31 of each year, give written notice to the Corporation stating the name and address of such Beneficial Owner, the number of shares of such class or series of stock Beneficially Owned by such Beneficial Owner, a full description of how shares are held and a statement identifying the actual or constructive owners of such shares. Each such Beneficial Owner shall, upon demand by the Corporation, disclose to the Corporation in writing such additional information with respect to its Beneficial Ownership of such class or series of stock as the Corporation, in its sole discretion, deems appropriate or necessary, to comply with the provisions of the Code regarding the qualification of the Corporation as a REIT.

(b) At the request of the Corporation, any Person who is a Beneficial Owner of Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock and any Person (including the shareholder of record) who is holding Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock for a Beneficial Owner, and any proposed transferee of shares, shall provide (i) such information as the Corporation, in its sole discretion, may request from time to time in order (A) to determine the Corporation's status as a REIT or (B) to ensure compliance with the requirements of any taxing authority or other governmental agency and (ii) a statement or affidavit to the Corporation setting forth the number of shares of each class or series of stock Beneficially Owned by such shareholder or proposed transferee and any related Persons specified, which statement or affidavit shall be in the form prescribed by the Corporation for that purpose.

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### 8.7 Remedies Not Limited

Nothing contained in this Article EIGHTH 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 in the preservation of the Corporation's status as a REIT.

### 8.8 Ambiguity

In the case of an ambiguity in the application of any of the provisions of Article EIGHTH, including any definition contained in Section 8.1, the Board of Directors shall have the power to determine the application of such provisions with respect to any situation based on its reasonable belief, understanding or knowledge of the circumstances.

### 8.9 Legend

Each certificate for Common Stock, Class B Common Stock, Preferred Stock and Non-Voting Preferred Stock shall bear the following legend:

"The shares of 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 ("REIT") under the Internal Revenue Code of 1986, as amended (the "Code"). No Person may Beneficially Own shares of Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock that would result in the Corporation being "closely held" under Section 856(h) of the Code or otherwise to fail to qualify as a REIT. Any Person who attempts to Beneficially Own shares of Common Stock, Class B Common Stock, Preferred Stock or Non-Voting Preferred Stock in excess of the applicable limitation must immediately notify the Corporation in writing. No Person may transfer shares of stock if such transfer would result in the outstanding stock being Beneficially Owned by less than 100 Persons (determined without reference to any rules of attribution). If the restrictions on transfer are violated, the shares of stock represented hereby will be transferred automatically and by operation of law to a Trust and shall be designated Excess Shares. Any terms not defined in this legend shall have the meanings ascribed to such terms in the Articles of Incorporation, a copy of which, including the restrictions on transfer, will be sent without charge to each stockholder who so requests."

### 8.10 Severability

If any provision of this Article EIGHTH or any application of any such provision is determined to be void, invalid or unenforceable by any Federal or state court having jurisdiction over the issues, the validity and enforceability of the remaining provisions of these Articles of Incorporation (including without limitation this Article EIGHTH) shall

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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.

#### 8.11 Excess Shares

(a) **Ownership in Trust.** Upon any purported Transfer, Non-Transfer Event or purported change in Beneficial Ownership that results in shares of Preferred Stock, Non-Voting Preferred Stock or Common Stock being designated Excess Shares pursuant to Section 8.3, such Excess Shares shall be transferred to a Trust for the exclusive benefit of the Beneficiary. The Corporation shall name a Beneficiary that is an organization described in Section 501(c)(3) of the Code, that is not an "individual" within the meaning of Section 542 of the Code, if one does not already exist, within five (5) days after the discovery of any Transfer to the Trust. Excess Shares shall remain issued and outstanding stock of the Corporation and shall be entitled to the same rights and privileges on identical terms and conditions as all other issued and outstanding shares of the same class and series. When transferred to the Permitted Transferee in accordance with the provisions of Section 8.11(e), such Excess Shares shall cease to be designated as Excess Shares.

(b) **Dividend Rights.** The Trustee, as record holder of the Excess Shares, 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 Preferred Stock, Non-Voting Preferred Stock or Common Stock designated Excess Shares and shall hold such dividends or distributions in trust for the benefit of the Beneficiary. The Prohibited Owner with respect to Excess Shares shall repay to the Trustee the amount of any dividends or distributions received by it that (i) are attributable to any shares of Preferred Stock, Non-Voting Preferred Stock or Common Stock designated Excess Shares and (ii) the record date of which is on or after the date that such shares became Excess Shares. 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 Preferred Stock, Non-Voting Preferred Stock or Common Stock Beneficially Owned by the Person who, but for the provisions of Section 8.3 of this Article EIGHTH, would Beneficially Own the Excess Shares; 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, the Trustee of Excess Shares shall be entitled to receive, ratably with each other holder of Preferred Stock, Non-Voting Preferred Stock or Common Stock of the same class or series, that portion of the assets of the Corporation available for distribution to the holders of such class and series. The Trustee shall distribute to the Prohibited Owner the amounts received upon such liquidation, dissolution, or winding up, or distribution; provided, however, that no Prohibited Owner shall be entitled to receive any amounts in excess of the

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price per share such Prohibited Owner paid for Preferred Stock, Non-Voting Preferred Stock or Common Stock in any purported Transfer that resulted in the Excess Shares or, in the case of a Non-Transfer Event or a Transfer in which the Prohibited Owner did not give value for such shares (e.g., through a gift or devise), a price per share equal to the Market Price on the date of any purported Transfer or Non-Transfer Event that resulted in the Excess Shares. Any remaining amount in the Trust shall be distributed ratably to the Beneficiary of the Trust.

(d) **Voting Rights.** The Trustee shall be entitled to vote all Excess Shares. Any vote by a Prohibited Owner as a holder of shares of Preferred Stock, Non-Voting Preferred Stock or Common Stock prior to the discovery by the Corporation that such shares of Preferred Stock, Non-Voting Preferred Stock or Common Stock are Excess Shares shall, subject to applicable law and only to the extent that no Person other than the Prohibited Owner is materially and adversely affected, be rescinded and shall be void *ab initio* with respect to such Excess Shares 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 stock under Section 8.3 of this Article EIGHTH, an irrevocable proxy to the Trustee to vote the Excess Shares 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 Excess Shares. As soon as reasonably practicable, in an orderly fashion so as not to materially adversely affect the Market Price of the Excess Shares, 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 Excess Shares and (ii) the Permitted Transferee so designated may acquire such Excess Shares without such acquisition resulting in a transfer to a Trust and the redesignation of such shares of Preferred Stock, Non-Voting Preferred Stock or Common Stock so acquired as Excess Shares under Section 8.3. Upon the designation by the Trustee of a Permitted Transferee in accordance with the provisions of this paragraph, the Trustee shall (i) cause to be transferred to the Permitted Transferee that number of Excess Shares 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 Preferred Stock, Non-Voting Preferred Stock or Common Stock; and (iii) distribute to the Beneficiary any and all amounts held with respect to the Excess Shares after making that payment to the Prohibited Owner pursuant to Section 8.11(f).

(f) **Compensation to Record Holder of Shares that Become Excess Shares.** Any Prohibited Owner shall be entitled (following discovery of the Excess Shares and subsequent designation of the Permitted Transferee in accordance with Section 8.11(e)) 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 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 such

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shares, or in the case of (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 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 Excess Shares in accordance with Section 8.11(e). Any amounts received by the Trustee in respect of such Excess Shares in excess of such amounts to be paid the Prohibited Owner pursuant to this Section 8.11(f) shall be distributed to the Beneficiary in accordance with the provisions of Section 8.11(e). 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 Excess Shares, except for claims arising out of the gross negligence or willful misconduct of, or any failure to make payments in accordance with this Section 8.11 by, such Trustee or the Corporation.

(g) **Purchase Right in Excess Shares.** Excess Shares 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 Excess Shares (or, in the case of a devise or gift, the Market Price on the date of such devise or gift) 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 Transfer which resulted in such Excess Shares and (ii) the date the Board of Directors determines in good faith that a Transfer resulting in Excess Shares has occurred.

#### NINTH AMENDMENTS

The Corporation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

3. The foregoing restatement contains amendments requiring shareholder approval and was adopted by (a) all of the members of the Board of Directors, and (b) the holders of outstanding Common Stock of the Corporation entitled to cast a majority of the votes of the voting groups which would be entitled to vote on and adopt the amendments at a meeting at which all voting groups and shareholders entitled to vote thereon were present and voted. The holders of the Common Stock of the Corporation constitute the only voting group of the shareholders entitled to vote on the amendment. Resolutions approving the foregoing amendments were adopted by all of the Directors and the sole shareholder of the Common Stock of the Corporation on December 15, 1997 and December 30, 1997, respectively.

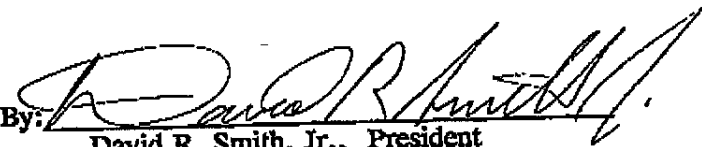
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4. The foregoing duly adopted Amended and Restated Articles of Incorporation supersede the original Articles of Incorporation and all amendments to them.

IN WITNESS WHEREOF, the undersigned President and Secretary of the aforesaid Corporation has executed these Amended and Restated Articles of Incorporation as of the 30th day of December, 1997.

BARNETT REAL ESTATE MANAGEMENT, INC.

By:   
David R. Smith, Jr., President

By:   
Kimberly B. Blalock, Secretary

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