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M. Julian Proctor, Jr.

Requestor's Name

Ausley & McMullen  
227 South Calhoun Street

Address

Tallahassee, FL 32301

425-5306

City/State/Zip

Phone #

Office Use Only

CORPORATION NAME(S) & DOCUMENT NUMBER(S), (if known):

1. University Club Management of Orlando,  
Inc.

(Corporation Name)

(Document #)

2.

(Corporation Name)

(Document #)

3.

(Corporation Name)

(Document #)

4.

(Corporation Name)

(Document #)

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Profit
NonProfit
Limited Liability
Domestication
Other

AMENDMENTS
<input checked="" type="checkbox"/> Amendment
Resignation of R.A., Officer/Director
Change of Registered Agent
Dissolution/Withdrawal
Merger

OTHER FILINGS
Annual Report
Fictitious Name
Name Reservation

REGISTRATION/ QUALIFICATION
Foreign
Limited Partnership
Reinstatement
Trademark
Other

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97 SEP 15 PM 4:27  
TALLAHASSEE, FLORIDA

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Examiner's Initials

**AMENDED AND RESTATED ARTICLES OF INCORPORATION OF  
UNIVERSITY CLUB MANAGEMENT OF ORLANDO, INC.**

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

The undersigned hereby files these Amended and Restated Articles of Incorporation of University Club Management of Orlando, Inc., a corporation under the laws of the State of Florida.

**ARTICLE I.  
Name and Principal Office**

The name of this Corporation shall be **UNIVERSITY CLUB MANAGEMENT OF ORLANDO, INC.** The principal place of business and mailing address of this Corporation shall be 1713 Mahan Drive, Suite C, Tallahassee, Florida 32308.

**ARTICLE II.  
Purpose and Nature of Business**

The sole purpose for which the Corporation is formed is to act as the Managing Member of University Club Apartments of Orlando, L.C., a Florida Limited Liability Company (the "Company"), and to engage in any activity and to exercise any powers permitted to corporations under the laws of the State of Florida that are incident, necessary, and appropriate to accomplish the foregoing purpose.

**ARTICLE III.  
Stock**

The authorized capital stock of this Corporation shall consist of 10,000 shares of Common Stock with a par value of One Dollar

(\$1.00) per share. The stock of the Corporation shall be issued for such consideration as may be determined by the Board of Directors but not less than par value.

**ARTICLE IV.  
Powers**

Notwithstanding any other provision of these Articles of Incorporation and any provision of law that so empowers the Corporation, the unanimous consent of all of its directors (including the Independent Director as defined in Article XIII below) is required for the Corporation to do any of the following:

A. engage in any business or activity other than the business described in Article II hereof and activities incidental thereto;

B. acquire or own any material assets other than an ownership interest in the Project (as defined in Article XI below);

C. merge into or consolidate with any person or entity or dissolve, terminate, or liquidate in whole or in part, transfer, or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Lender's (as defined in Article XI below) consent;

D. fail to preserve its existence as an entity duly organized, validly existing, and in good standing under the laws of the State of Florida;

E. amend or modify these Amended and Restated Articles of Incorporation or amend or cause to be amended the Company's organizational documents;

F. incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than unsecured trade debt incurred in the ordinary course of business which shall be payable within thirty (30) days of the date incurred, provided that the total outstanding amount does not at any one time exceed any maximum amount or limitation specified in the First Mortgage (as defined in Article XI hereof);

G. file or consent to the filing of any petition, either voluntary or involuntary, or consent to the institution of any proceedings, to take advantage of any applicable federal or state laws relating to insolvency, bankruptcy, liquidation, or reorganization, institute proceedings to be adjudicated bankrupt or insolvent, or make an assignment for the benefit of creditors;

H. withdraw or resign as the Company's Managing Member;

I. seek or consent to the appointment of a receiver, liquidator, conservator, assignee, trustee, sequestrator, custodian, or any other similar official of the Corporation or the Partnership or a substantial part of their respective properties;

J. admit in writing its inability to pay its debts generally as they become due;

K. otherwise seek relief under any laws relating to the relief from debts or the protection of debtors generally;

L. engage in transactions with affiliates; or

M. take any action in furtherance of any of the preceding actions.

**ARTICLE V.  
Incorporator**

The name and street address of the Incorporator of this Corporation are as follows:

THOMAS C. PROCTOR  
1713 Mahan Drive, Suite C  
Tallahassee, Florida 32308

**ARTICLE VI.  
Term of Corporate Existence**

This Corporation shall exist perpetually or until it is dissolved according to the provisions of Florida law.

**ARTICLE VII.  
Address of Registered Office and Registered Agent**

The street address of the initial Registered Office of this Corporation in the State of Florida shall be 227 South Calhoun Street, Tallahassee, Florida 32301. The name of the initial Registered Agent of the Corporation at the above address shall be **M. JULIAN PROCTOR, JR.** The Board of Directors may from time to time change the Registered Office to any other address in the State of Florida or change the Registered Agent.

**ARTICLE VIII.  
Number of Directors**

This Corporation shall have at least three (3) directors, one of whom shall be an Independent Director. Notwithstanding anything to the contrary contained herein, such directorship of the Independent Director shall not be eliminated by reason of a vacancy. No Independent Director may be removed unless his or her

successor has been elected. The term "Independent Director" shall mean a director of the Corporation who is not at the time of initial appointment and has not been at any time during the preceding five (5) years and shall not be at any time while serving as Independent Director: (a) a stockholder, director, officer, employee, partner, or member of the Company, or any affiliate of the Corporation or the Company; (b) a stockholder, director, officer, employee, partner, member of, or an individual who is a customer, supplier, or service provider (including professionals), or other person who derives more than ten percent (10%) of its purchases, revenues, compensation, or other financial remuneration from its activities with any member of the Company, the Company, the Corporation, or any affiliate of any such member, the Company, or the Corporation, or who otherwise is financially dependent upon an officer, director, or employee of the Company, the Corporation, a family member (by blood or marriage) of any such officer, director, or employee, or a business entity owned or controlled by any of the foregoing; (c) a person or other entity controlling or under common control with any such stockholder, director, officer, employee, partner, member, customer, supplier, or other person; or (d) a member of the immediate family of any individual described in (a), (b), or (c) above. (As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies, or activities of a person or entity, whether through ownership of voting securities, by contract, or otherwise).

No Independent Director shall, with regard to any action to be taken under or in connection with these Articles of Incorporation, owe a fiduciary duty or other obligation to the initial stockholder or to any successor stockholder of the Corporation, and every stockholder, including each successor stockholder, of the Corporation shall consent to the foregoing by virtue of such stockholder's purchase of shares of capital stock of the Corporation, no other act or deed of any stockholder being required to evidence such consent. Instead, to the fullest extent permitted by law, the Independent Director's fiduciary duty and other obligations with regard to any action under or in connection with these Articles of Incorporation shall be owed to the Corporation (including its creditors and creditors of the Company other than affiliates that are creditors). To the fullest extent permitted by applicable law, the Board of Directors of the Corporation shall consider the interests of creditors of the Corporation and the Company (other than Affiliates that are creditors) in connection with all corporate action.

#### **ARTICLE IX.**

##### **Board of Directors**

The Board of Directors shall consist of three (3) persons. The names and street addresses of the members of the initial Board of Directors of this Corporation who shall hold office until the first annual meeting of the shareholders, and thereafter until any successors are elected are as follows:

<u>Name</u>	<u>Address</u>
Thomas C. Proctor	1713 Mahan Drive, Suite C Tallahassee, Florida 32308
Robert W. Browning, Jr.	1713 Mahan Drive, Suite C Tallahassee, Florida 32308
Matthew W. Ryan	4435 Argyle Lane Tallahassee, Florida 32308

#### **ARTICLE X. Officers**

The Corporation shall have a President, a Secretary, and a Treasurer and may have additional and assistant officers including, without limitation thereto, one or more Vice Presidents, Assistant Secretaries, and Assistant Treasurers. A person may hold more than one office. The names and addresses of the initial officers are as follows:

<u>Name/Office</u>	<u>Address</u>
Thomas C. Proctor President/Secretary/ Treasurer	1713 Mahan Drive, Suite C Tallahassee, Florida 32308
Robert W. Browning, Jr. Vice-President/ Assistant Secretary	1713 Mahan Drive, Suite C Tallahassee, Florida 32308

#### **ARTICLE XI. Transfer of Interest**

Notwithstanding any other provision of these Articles to the contrary, so long as the \$17,000,000.00 Mortgage (the "First Mortgage"), which the Company intends to execute and deliver to GMAC Commercial Mortgage Corporation (the "Lender") on or about September 18, 1997, which will encumber the Company's property at 12024 Royal Wulff Lane, Orlando, Florida, known as University Club



Apartments of Orlando (the "Project"), is outstanding, there shall be no transfer of any direct or indirect ownership interest in the Corporation such that the transferee would own more than a forty-nine percent (49%) interest in the Corporation, or otherwise have control (as defined in Article VIII above) over the Corporation, unless such transfer is conditioned upon the delivery of an acceptable Non-Consolidation Opinion (as defined below) to the holder of the First Mortgage and to any nationally recognized rating agency which has been requested by the holder of the First Mortgage to rate any issue of securities issued in respect to a pool of mortgage loans which includes the loan secured by the First Mortgage (the "Certificates") and which is then rating, or is expected to rate, such Certificates (individually, a "Rating Agency") concerning, as applicable, the Corporation, the new transferee, and/or their respective owners.

For purposes of this paragraph, "Non-Consolidation Opinion" shall mean an opinion of the Corporation's counsel directed to the holder of the First Mortgage and each Rating Agency, such opinion to be in form and substance reasonably satisfactory to the holder of the First Mortgage and each Rating Agency and containing assumptions, limitations, and qualifications customary for opinions of such type to the effect that a court of competent jurisdiction in a proceeding under the United States Bankruptcy Code would not consolidate the assets and liabilities of the Corporation with those of any shareholder or affiliate thereof which became a debtor under the United States Bankruptcy Code, and if applicable to the

Corporation, that any such transfer would not be a fraudulent conveyance under the United States Bankruptcy Code.

**ARTICLE XII.  
Books and Records**

Notwithstanding any other provision of these Articles of Incorporation to the contrary, the Corporation shall:

- A. maintain books and records separate from any other person or entity;
- B. maintain its bank accounts separate from any other person or entity;
- C. not commingle its assets with those of any other person or entity and hold all of its assets in its own name;
- D. conduct its own business in its own name;
- E. maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other person or entity;
- F. pay its own liabilities and expenses only out of its own funds;
- G. observe all corporate and other organizational formalities;
- H. maintain an arm's length relationship with its affiliates and enter into transactions with affiliates only on a commercially reasonable basis;
- I. pay the salaries of its own employees from its own funds;
- J. maintain a sufficient number of employees in light of its contemplated business operations;

K. not guarantee or become obligated for the debts of any other entity or person;

L. not hold out its credit as being available to satisfy the obligations of any other person or entity;

M. not acquire the obligations or securities of its affiliates or owners, including partners, members, or shareholders, as appropriate;

N. not make loans to any other person or entity or buy or hold evidence of indebtedness issued by any other person or entity (other than cash and investment-grade securities);

O. allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate;

P. use separate stationery, invoices, and checks bearing its own name;

Q. not pledge its assets for the benefit of any other person or entity;

R. hold itself out as a separate identity;

S. correct any known misunderstanding regarding its separate identity;

T. not identify itself as a division of any other person or entity; and

U. maintain adequate capital in light of its contemplated business operations.


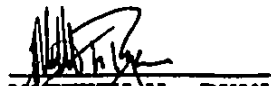
**ARTICLE XIII.**  
**Amendment**

These Amended and Restated Articles of Incorporation shall not be amended unless such amendment(s) has been unanimously approved by the Corporation's Board of Directors (including the Independent Director). Any bylaws adopted by the Corporation, and any alteration, amendment, or repeal thereof, shall not in any manner impair, nor impair the intent of, Articles II, IV, VIII, XI, XII, or XIII of these Amended and Restated Articles of Incorporation.

IN WITNESS WHEREOF, the undersigned, being the original subscribing Incorporator and constituting all of the Corporation's directors, have duly adopted and executed these Amended and Restated Articles of Incorporation pursuant to the provisions of Sections 607.1005, 607.1006(1)(e), and 607.1007, Florida Statutes, this 12<sup>th</sup> day of September, 1997, without shareholder action, which was not required.



THOMAS C. PROCTOR  
Incorporator/Director

  
ROBERT W. BROWNING, JR.  
Director  
MATTHEW W. RYAN  
Director

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 12th day of September, 1997, by THOMAS C. PROCTOR. Such person: ( ☒ ) is personally known to me; ( ) produced a current Florida driver's license as identification.



DONNA MARIE WALTERS  
My Commission CC498374  
Expires Sep. 27, 1999

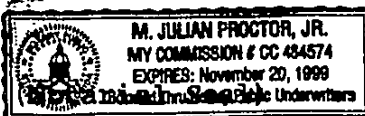
(Notarial Seal)

Donna Marie Walters  
(Signature of Notary Public)

(Typed or Printed Name of Notary Public)

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 12th day of September, 1997, by ROBERT W. BROWNING, JR. Such person: ( ☒ ) is personally known to me; ( ) produced a current Florida driver's license as identification.

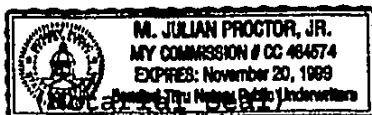


M. Julian Proctor, Jr.  
(Signature of Notary Public)

(Typed or Printed Name of Notary Public)

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 12th day of September, 1997, by MATTHEW W. RYAN. Such person: ( ☒ ) is personally known to me; ( ) produced a current Florida driver's license as identification.



M. Julian Proctor, Jr.  
(Signature of Notary Public)

(Typed or Printed Name of Notary Public)

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