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J. BRYAN

AUG 22 2011

EXAMINER

COVER LETTER

TO: Registration Section
Division of Corporations

SUBJECT: Burlington Self Storage of West Palm Beach, L.L.C.
Name of Limited Liability Company

The enclosed Articles of Amendment and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to the following:

MICHAEL R. LEMAIRE, ESQ.

Name of Person

SADER & LEMAIRE, P.A.

Firm/Company

6300 N.E. 1ST AVENUE, SUITE 102

Address

FORT LAUDERDALE, FL 33334

City/State and Zip Code

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

MICHAEL R. LEMAIRE, ESQ.

Name of Person

at (954)

776-7004

Area Code & Daytime Telephone Number

Enclosed is a check for the following amount:

☐ \$25.00 Filing Fee

☐ \$30.00 Filing Fee &
Certificate of Status

☐ \$55.00 Filing Fee &
Certified Copy
(additional copy is enclosed)

☒ \$60.00 Filing Fee,
Certificate of Status &
Certified Copy
(additional copy is enclosed)

MAILING ADDRESS:

Registration Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

STREET/COURIER ADDRESS:

Registration Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

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SECOND AMENDED AND RESTATED
ARTICLES OF ORGANIZATION
OF

BURLINGTON SELF STORAGE OF WEST PALM BEACH, L.L.C.
A FLORIDA LIMITED LIABILITY COMPANY

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The following Second Amended and Restated Articles of Organization were adopted by the above-named limited liability company in substitution for the original Articles of Organization filed on April 3, 2003 and for the Amended and Restated Articles of Organization filed on May 18, 2005:

ARTICLE ONE: NAME

The name of the limited liability company is:

Burlington Self Storage of West Palm Beach, L.L.C.

ARTICLE TWO: ADDRESS

The street address of the principal office of the limited liability company is:

411-422 7th Street
West Palm Beach, Florida 33401

The mailing address of the limited liability company is:

411-422 7th Street
West Palm Beach, Florida 33401

ARTICLE THREE: SINGLE PURPOSE ENTITY REQUIREMENTS

Notwithstanding any other provisions contained in these Articles the Company has complied and shall comply with the following single purpose entity requirements ("**Single Purpose Entity Requirements**") in order to maintain its status as a separate entity and to avoid any confusion or potential consolidation with any Affiliate:

(a) **Limited Purpose.** The sole purpose conducted or promoted by the Company since its organization and at least during the term of the Loan is to engage only in the following activities:

- (i) to acquire, own, hold, lease, operate, manage, maintain, develop and improve the Property;

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- (ii) to enter into and perform its obligations under the loan agreement(s), promissory note, mortgage, financing statements and any and all other documents which the Company is required to execute and deliver in connection with the loan from General Electric Capital Corporation in the amount of \$4,461,000 (the "Loan Documents");
 - (iii) to sell, transfer, service, convey, dispose of, pledge, assign, borrow money against, finance, refinance or otherwise deal with the Property to the extent permitted under the Loan Documents; and
 - (iv) to engage in any lawful act or activity and to exercise any powers permitted to limited liability companies organized under the laws of the State of Florida that are related or incidental to and necessary, convenient or advisable for the accomplishment of the above mentioned purposes.

(b) Limitations on Indebtedness, Actions. Notwithstanding anything to the contrary in these Articles or in any other document governing the formation, management or operation of the Company, the Company since its organization has not and shall not:

- (i) guarantee any obligation of any Person, including any Affiliate, or become obligated for the debts of any other Person or hold out its credit as being available to pay the obligations of any other Person;
- (ii) engage, directly or indirectly, in any business other than as required or permitted to be performed under this Article;
- (iii) incur, create or assume any indebtedness or liabilities other than (A) the Loan, (B) unsecured trade payables incurred in the ordinary course of its business that are related to the ownership and operation of the Property, do not exceed two percent (2%) of the outstanding balance of the Loan, are not evidenced by a note and which must be paid within sixty (60) days from the date incurred, and (C) such as are otherwise expressly permitted under the Loan Documents; no indebtedness, other than the Loan, may be secured by the Property;
- (iv) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person, except that the Company may invest in those investments permitted under the Loan Documents;
- (v) to the fullest extent permitted by law, engage in any dissolution, liquidation, consolidation, merger, sale or other transfer of any of its assets outside the ordinary course of the Company's business;
- (vi) buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities);

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- (vii) form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other) or own any equity interest in any other entity;
- (viii) own any asset or property other than the Property and incidental personal property necessary for the ownership or operation of the Property;
- (ix) take any Material Action without the unanimous written approval of all members of the Company; or
- (x) amend, modify or otherwise change these Articles with respect to the Single Purpose Entity Requirements in this Article Three, or Articles Four, Five and Six hereof.

(c) Separateness Covenants. In the conduct of the Company operations since its organization and so long as any obligation under the Loan is outstanding it has observed and will continue to observe the following covenants:

- (i) maintain books and records and bank accounts separate from those of any other Person;
- (ii) maintain its assets in such a manner that it is not costly or difficult to segregate, identify or ascertain such assets;
- (iii) comply with all organizational formalities necessary to maintain its separate existence;
- (iv) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity;
- (v) maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other Person and not have its assets listed on any financial statement of any other Person; except that the Company's assets may be included in a consolidated financial statement of its Affiliates so long as appropriate notation is made on such consolidated financial statements to indicate the separateness of the Company from such Affiliates and to indicate that the Company's assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person;
- (vi) prepare and file its own tax returns separate from those of any Person to the extent required by applicable law, and pay any taxes required to be paid by applicable law;
- (vii) allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including for shared office space and for services performed by an employee of an Affiliate;

- (viii) not enter into any transaction with Affiliates except on an arm's-length basis on terms which are intrinsically fair and no less favorable than would be available for unaffiliated third parties, and pursuant to written enforceable agreements;
- (ix) conduct business in its own name, and use separate stationery, invoices and checks;
- (x) not commingle its assets or funds with those of any other Person;
- (xi) not assume, guarantee or pay the debts or obligations of any other Person;
- (xii) correct any known misunderstanding as to its separate identity and not identify itself as a department or division of any other Person;
- (xiii) not permit any Affiliate to guarantee or pay its obligations (other than limited guarantees and indemnities set forth in the Loan Documents);
- (xiv) not pledge its assets to secure the obligations of any other Person;
- (xv) pay its liabilities and expenses out of and to the extent of its own funds;
- (xvi) maintain a sufficient number of employees in light of its contemplated business purpose and pay the salaries of its own employees, if any, only from its own funds;
- (xvii) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities; provided, however, that the foregoing shall not require any equity owner to make additional capital contributions to the Company or prohibit capital contributions and distributions permitted under the terms and conditions of the Company's organizational documents and applicable law and properly reflected in the books and records of the Company;
- (xviii) not acquire any obligation or securities of its equity owners or of any Affiliate of the Company; and
- (xix) cause the managers, officers, employees, agents and other representatives of the Company to act at all times with respect to the Company consistently and in furtherance of the foregoing and in the best interests of the Company.

Failure of the Company to comply with any of the foregoing covenants or any other covenants contained in this Agreement shall not affect the status of the Company as a separate legal entity.

(d) SPE Party. Company shall at all times have a Managing Member ("SPE Party") with provisions in such SPE Party's organizational documents limiting its purpose and authority to those set forth in clauses (a) - (c) above, modified to allow such SPE Party to act as Managing Member of Company so long as any obligation under the Loan remains outstanding, and to engage in no other business or activity.

ARTICLE FOUR: PROPERTY; PARTITION; NATURE OF INTEREST.

(a) All property owned by the Company shall be owned by the Company as an entity and, insofar as permitted by applicable law, no Member shall have any ownership interest in any Company property in its individual name or right, and each Member's ownership interest in Company shall be personal property for all purposes.

(b) To the fullest extent permitted by law, each Member and any additional Member admitted to the Company hereby irrevocably waives any right or power that such Person might have to cause the Company or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the Company, to compel any sale of all or any portion of the assets of the Company pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Company. The Member shall not have any interest in any specific assets of the Company, and the Member shall not have the status of a creditor with respect to any distribution pursuant to this Agreement. The interest of the Member in the Company is personal property.

**ARTICLE FIVE: EFFECT OF BANKRUPTCY, DEATH OR INCOMPETENCY
OF A MEMBER.**

(a) The bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency of a Member shall not cause the termination or dissolution of the Company and the business of the Company shall continue. Upon any such occurrence, the trustee, receiver, personal representative, executor, administrator, committee, guardian or conservator of such Member shall have all the rights of such Member for the purpose of settling or managing its estate or property, subject to satisfying conditions precedent to the admission of such assignee as a substitute Member. The transfer by such trustee, receiver, executor, administrator, committee, guardian or conservator of any interest in the Company shall be subject to all of the restrictions, hereunder to which such transfer would have been subject if such transfer had been made by such bankrupt, deceased, dissolved, liquidated, terminated or incompetent Member.

(b) Upon the occurrence of any event that causes the last remaining Member of the Company to cease to be a Member of the Company or that causes the Member to cease to be a Member of the Company, to the fullest extent permitted by law, the personal representative of such member is hereby authorized to, and shall, within 90 days after the occurrence of the event that terminated the continued membership of such Member in the Company agree in writing (i) to continue the Company and (ii) to the admission of the personal representative or its

nominee or designee, as the case may be, as a substitute Member of the Company effective as of the occurrence of the event that terminated the continued membership of the last remaining Member of the Company or the Member in the Company.

(c) Notwithstanding any other provision of this Agreement, each Member, and any additional Member waive any right it might have to agree in writing to dissolve the Company upon the bankruptcy, death, dissolution, liquidation or termination of the Member or additional Member, or the occurrence of an event that causes the Member or additional Member to cease to be a Member of the Company.

ARTICLE SIX: INDEMNIFICATION

So long as any obligation with respect to the Loan is outstanding, no indemnity payment from funds of the Company (as distinct from funds from other sources, such as insurance) of any indemnity which may now or in the future exist, shall be payable from amounts allocable to any other Person pursuant to the Loan Documents.

Any indemnification shall be fully subordinate to the Loan and, to the fullest extent permitted by law, shall not constitute a claim against Company in the event that the Company's cash flow is insufficient to pay its Obligations.

ARTICLE SEVEN: MANAGING MEMBER

The Company shall be managed by a Managing Member. The Managing Member of the Company shall be West Palm Beach Management, Inc., a Florida corporation, whose principal office address is 411-422 7th Street, West Palm Beach, Florida 33401.

ARTICLE EIGHT: DEFINITIONS

"Affiliate" means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person.

"Control" (including the terms **"Controlling"** and **"Controlled"**) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or general partnership or managing member interests, by contract or otherwise.

"Material Action" means to file any insolvency or reorganization case or proceeding, to institute proceedings to have the Company or Managing Member be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, to consent to the filing or institution of bankruptcy or insolvency proceedings against the Company or the Managing

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Member, to file a petition seeking, or consent to, reorganization or relief with respect to the Company or the Managing Member under any applicable federal or state law relating to bankruptcy or insolvency, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for the Company or the Managing Member or a substantial part of its property, to make any assignment for the benefit of creditors of the Company or the Managing Member, to admit in writing the Company's or the Managing Member inability to pay its debts generally as they become due, or to take action in furtherance of any of the foregoing.

"Loan" means that certain first lien mortgage loan in the original principal amount of \$4,461,000 made by General Electric Corporation (**"Lender"**) to Company.

"Loan Documents" means (a) the Loan Agreement, (b) the Note, (c) the Mortgage, (d) the Assignment of Leases and Rents, (e) UCC financing statements, (f) such assignments of management agreements, contracts and other rights as may be required under the Commitment or otherwise requested by Lender, (g) all other documents evidencing, securing, governing or otherwise pertaining to the Loan, (h) any letter of credit provided to Lender in connection with the Loan, and (i) all amendments, modifications, renewals, substitutions and replacements of any of the foregoing; provided however, in no event shall the term "Loan Documents" include that certain Hazardous Materials Indemnity Agreement (the "Environmental Indemnity Agreement") in favor of Lender.

"Person" means any individual, corporation, partnership, joint venture, joint stock association, business or other trust, unincorporated organization, governmental authority or any other form of entity.

"Property" means that certain parcel of real estate including improvements thereon and known as Downtown Business Park, located at 411-422 7th Street in the City of West Palm Beach, State of Florida.

ARTICLE NINE: REGISTERED AGENT

The name and Florida street address of the registered agent is:

Robert L. Sader, Esq.
6300 NE 1st Avenue
Suite 102
Ft. Lauderdale, Florida 33334

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Registered Agent Signature:

Robert L. Sader, Esq.

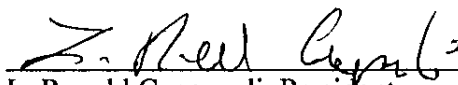
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IN WITNESS WHEREOF, the foregoing Second Amended and Restated Articles of Organization have been executed by the undersigned, being all of the Members of this limited liability company, at Fort Lauderdale, Broward County, Florida, on this 17 day of August 2011.


L. RONALD CAPOZZOLI, Member


CHRISTOPHER M. CAPOZZOLI, Member

WEST PALM BEACH MANAGEMENT,
INC. a Florida corporation, Managing
Member

BY: 
L. Ronald Capozzoli, President