

Division of Corporations

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LIMITED LIABILITY AMENDMENT

FITTIPALDI EXECUTIVE CENTER I, LLC

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DEPARTMENT OF STATE
DIVISION OF CORPORATIONS
TALLAHASSEE, FL 32304

JB
11-17-03

**AMENDED AND RESTATED
ARTICLES OF ORGANIZATION
OF
FITTIPALDI EXECUTIVE CENTER I, LLC**

Pursuant to the provisions of Section 608.411 of the Florida Limited Liability Company Act, the undersigned Florida limited liability company adopts the following Amended and Restated Articles of Amendment to its Articles of Organization:

1. The name of this limited liability company is FITTIPALDI EXECUTIVE CENTER I, LLC (the "Company").

2. The date of filing of the articles of organization was October 24, 2003.

3. The principal place of business and the mailing address of the Company is:

Fittipaldi Executive Center I, LLC
1001 Brickell Bay Drive, 9th Floor
Miami, Florida 33131
Attn: Emerson Fittipaldi

4. The name and address of the registered agent of the Company is:

CT Corporation
1200 South Pine Island Road
Plantation, FL 33324

5. Subject to Article 7 herein, this limited liability company is organized for the purpose of transacting any or all lawful business.

6. Subject to paragraph 7.3(b), the Company shall indemnify any and all of its members, managers, officers, employees or agents or former officers, managers, employees or agents or any person or persons who may have served at its request as an officer, manager, employee or agent of another company, corporation, partnership, joint venture, trust or other enterprise in which it owns an equity interest or of which it is a creditor, to the full extent permitted by law. Said indemnification shall include, but not be limited to, the expenses, including the cost of any judgments, fines, settlements and counsel's fees, actually and necessarily paid or incurred in connection with any action, suit or proceedings, whether civil, criminal, administrative or investigative, and any appeals thereof, to which any such person or their legal representative may be made a party or may be threatened to be made a party, by reason of such person being or having been an officer, employee or agent as herein provided. The foregoing right of indemnification shall not be exclusive of any other rights to which any officer, employee or agent may be entitled as a matter of law or which such person may be lawfully granted.

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7. Special Purpose.

7.1 Notwithstanding any other provision of these Articles of Organization to the contrary, Articles 7.1, 7.2 and 7.3 herein shall apply and govern and shall not be amended for so long as that certain mezzanine loan (the "Loan") in the original principal amount of \$13,640,000 made by Carbon Capital, Inc. (the "Lender") to Brickell Main Street Management, Ltd., a Florida limited partnership ("BMSM Ltd."), BMS Investors Group, Ltd., a Florida limited partnership ("BMS"), Cap Ferrat, Ltd., a Florida limited partnership, and the Company (collectively, the "Co-Borrowers"), remains outstanding and not indefeasibly paid in full. When the Loan is no longer outstanding and has been indefeasibly paid in full, Articles 7.1, 7.2 and 7.3 herein shall no longer remain in effect and shall be null and void; provided, however, that until such time, Articles 7.1, 7.2 and 7.3 herein shall govern over any provision in these Articles of Organization.

7.2 Notwithstanding any other provisions of these Articles of Organization to the contrary, the nature of the business and the purposes to be conducted and promoted by the Company is to (a) own, hold, sell, assign, transfer, pledge and otherwise deal with all or any portion of the limited partner interest issued by Brickell Main Street LLLP ("BMS LLLP") to Fitipaldi Executive Center, Inc. ("FEC") and contributed by FEC to the Company (such limited partner interest, the "Interest"); (b) do any and all things incident thereto or in connection therewith; (c) enter into that certain guaranty (the "Guaranty") by Brasilinvest Empreendimentos e Participações S.A., a company organized under the laws of the Federative Republic of Brazil ("Brasilinvest"), Constructa, Inc., a Delaware corporation ("Constructa"), and the Company for the benefit of Fremont Investment and Loan ("Lender") and that certain Environmental Indemnity (the "Environmental Indemnity") by BMS LLLP, BMSM Ltd., and the Company for the benefit of Lender, dated November __, 2003 made in connection with a loan to BMS LLLP in the amount of \$56,000,000 pursuant to that certain Loan and Security Agreement between BMS LLLP and Lender dated November __, 2003; and (d) enter into any modifications, extensions or amendments to the Loan, the Guaranty, and the Environmental Indemnity.

7.3 Notwithstanding any other provisions of these Articles of Organization to the contrary, for so long as the Loan remains outstanding and not indefeasibly paid in full, the Company shall comply with the following provisions, unless expressly permitted or required otherwise by the Loan Documents (as hereinafter defined) or with the prior approval of the Lender:

- (a) Certain Prohibited Activities. The Company shall incur indebtedness in an amount necessary to meet its obligations with respect to the Interest. The Company shall not incur, assume or guaranty any other indebtedness, except as otherwise permitted under the Loan Documents or with the prior approval of the Lender; provided, however, that notwithstanding anything to the contrary in Article 7.2 or this Article 7.3, neither the execution and delivery by the Company of that certain Contribution Agreement by and among the Operating Partnership and the

Co-Borrowers nor the performance of its obligations under such Contribution Agreement shall be deemed to constitute a violation of Article 7.2 or this Article 7.3. The Company shall not dissolve, liquidate, merge or sell all or substantially all of its assets, or voluntarily commence a case, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the managing members of the Company, including the special purpose managing member of the Company. No material amendment may be made to Article 7.1, Article 7.2 or this Article 7.3 or to the Company's Operating Agreement, without first obtaining the approval of the Lender. Unless otherwise approved by the Lender, there shall be no return of Invested Capital (as defined in the Operating Agreement) to the Members, no return on Invested Capital to the Members, no distributions of Available Cash (as defined in the Operating Agreement) to the Members and no payments or distributions to Members or affiliates of Members of any nature whatsoever, including, without limitation, the payment of affiliate fees.

- (b) Indemnification. Any indemnification of the Company's members as provided for in Article 4 hereof, or of those individuals who served as managers of the Company prior to the effective date of these Articles of Organization, shall be fully subordinated to the Loan and such indemnification shall not constitute a claim against the Company in the event that cash flow necessary to pay holders of such obligations is insufficient to pay such obligations.

- (c) Separateness Covenants. In order to preserve and ensure its separate and distinct identity, in addition to the other provisions set forth in these Articles of Organization, the Company shall conduct its affairs in accordance with the following provisions:

- (i) It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its affiliates or, if it shares office space with its affiliates, it shall be allocated, fairly and reasonably, any overhead and expense for shared office space.
- (ii) It shall not own any asset or property other than the Interest and such other property and assets as are incidental to the conduct of the business of the Company as provided in Article 7.2.
- (iii) It shall not engage, directly or indirectly, in any business other than the business of the Company as provided in Article 7.2 and it shall conduct and operate its business as presently conducted and operated.

- (iv) Its Managing Members shall hold appropriate meetings (or act by written consent) to authorize all appropriate limited liability company actions, and in authorizing such actions, shall observe all legal formalities.
- (v) It shall not enter into any contract or agreement with any affiliate of the Company or any constituent party of the Company except upon terms and conditions that are commercially reasonable and substantially similar to those that would be available on an arms-length basis with unrelated third parties.
- (vi) It has not incurred and shall not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (A) the Loan, (B) trade payables or accrued expenses incurred in the ordinary course of the business with trade creditors and in amounts as are normal and reasonable under the circumstances and (C) such reasonable affiliate indebtedness relating to its operating expenses incurred in order that it may comply with the separateness and other requirements of Articles 7.2 and 7.3, provided that all such affiliate indebtedness shall at all times be fully subordinate to the Loan. No indebtedness, other than the Loan, may be secured (subordinate or pari passu) by all or any portion of the Interest that is pledged to secure the Loan.
- (vii) It has not made and shall not make any loans or advances to any third party including any affiliate of the Company or constituent party of the Company and shall not acquire obligations or securities of its affiliates other than the Interest.
- (viii) It is and shall remain solvent and shall pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its Assets (as hereinafter defined) as the same shall become due.
- (ix) It has done or caused to be done and shall do all things necessary to observe organizational formalities and preserve its existence, and it shall not amend, modify or otherwise change these Articles of Organization or the Operating Agreement of the Company without the prior written consent of the Lender.
- (x) It shall maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party and the Company shall file its own separate tax returns. It shall maintain its books, records, resolutions and agreements as official records.

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- (xi) It shall be, and at all times shall hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of the Company or any constituent party of the Company), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct and operate its business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize separate stationery, invoices and checks.
- (xii) It shall maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.
- (xiii) Neither the Company nor any constituent party shall seek or permit the dissolution, winding up, liquidation, consolidation or merger in whole or in part, of the Company, or acquire by purchase or otherwise all or substantially all the business or assets of, or, with the exception of the Interest, any stock or other evidence of beneficial ownership of any other person or entity.
- (xiv) It shall not commingle the funds and other Assets of the Company with those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person.
- (xv) It has and shall maintain its Assets in such a manner that it shall not be costly or difficult to segregate, ascertain or identify its individual asset or assets, as the case may be, from those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person.
- (xvi) It shall pay any liabilities out of its own funds, including salaries of any employees.
- (xvii) The Company shall maintain a sufficient number of employees in light of its contemplated business operations, or if it shares employees with any affiliate, it shall be allocated, fairly and reasonably, any overhead and expense for such shared employee(s).
- (xviii) The Company shall not guarantee or become obligated for the debts of any other entity or person.
- (xix) The Company shall have a managing member which shall be organized to be a single purpose, "bankruptcy remote" entity.
- (xx) The Company shall not form, acquire or hold any subsidiary entity.

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(xxd) It shall not pledge its assets and does not and shall not hold itself out to be responsible for the debts or obligations of any other person.

(d) Voting. When voting on matters concerning the Company, notwithstanding that the Company is not then insolvent, the Company shall take into account the interest of its creditors, as well as those of its members, to the maximum extent consistent with applicable law.

(e) Dissolution.

(i) The Company shall have one special purpose member with at least a one-half percent (.5%) membership interest in the Company and that complies with the special purpose provisions contained in Article IX of the Articles of Incorporation of such special purpose managing member.

(ii) The Company shall not terminate or dissolve solely as a consequence of the bankruptcy or insolvency of one or more of the managing members of the Company but the Company shall continue so long as there remains a solvent managing member of the Company.

(iii) Subject to applicable law, dissolution of the Company shall not occur so long as the Company remains owner of all or part of the Interest.

(iv) Upon the dissociation or withdrawal of the special purpose managing member from the Company or the bankruptcy, insolvency or liquidation of the special purpose managing member, the Company shall appoint a new special purpose managing member and deliver an acceptable non-consolidation opinion to the Lender concerning, as applicable, the Company, the new special purpose managing member and its owners.

(f) Certain Actions Requiring Unanimous Consent of the Managing Members. The unanimous consent of all managing members (including that of the special purpose managing member) shall be required for the Company to: (i) file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding; institute any proceedings under any applicable insolvency law or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, in each case relating to either the Company or, (ii) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Company or a substantial portion of the Assets of the Company; (iii) make any assignment for the benefit of

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the Company's creditors, or (iv) take any action in furtherance of the foregoing.

For purpose of Articles 7.1, 7.2 and 7.3 herein, the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the Company, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the Company or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from the Company or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Assets" means, collectively, the Interest and all other assets and property as shall be owned by the Company from time to time in accordance with the terms of these Articles of Organization.

"Loan Documents" means that certain loan agreement entered into by and among the Lender, the Co-Borrowers and certain guarantors of the Loan governing the terms and conditions of the Loan together with such other documents as evidence the Loan and/or are entered into in connection with the Loan.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

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IN WITNESS WHEREOF, the undersigned member of FITTIPALDI
EXECUTIVE CENTER I, LLC, has executed these Amended and Restated Articles of
Organization this 12th day of November 2003.

FITTIPALDI EXECUTIVE CENTER, INC.

Emerson Fittipaldi, President

By: 

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