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Division of Corporations

HILL WARD HENDERSON

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Account Name : HILL, WARD & HENDERSON, P.A. II  
Account Number : 072100000520  
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4757-3

Ward/07/04

LIMITED LIABILITY AMENDMENT

CS COMPANY, LLC

Certificate of Status	1
Certified Copy	1
Page Count	05
Estimated Charge	\$60.00

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**AMENDED AND RESTATED  
ARTICLES OF ORGANIZATION  
OF  
CS COMPANY, LLC**

The undersigned does hereby amend and restate the Articles of Organization of CS Company, LLC, a Florida limited liability company (the "Company") as originally filed with the Florida Secretary of State on January 14, 2004, pursuant to the provisions of Section 608.411 of the Florida Limited Liability Company Act:

**ARTICLE I. NAME**

The name of the limited liability company is: CS Company, LLC

**ARTICLE II. ADDRESS**

The mailing and street address of the principal office of the limited liability company is 221 Walton Street, Suite 100, Syracuse, New York 13202.

**ARTICLE III. MANAGEMENT OF COMPANY**

The limited liability company is to be a manager-managed company.

**ARTICLE IV. PURPOSE**

The Company's business and purpose shall consist solely of the following:

To engage solely in the ownership, operation and management of the real estate project known as Counsel Square located in New Port Richey, Florida (the "Property"), pursuant to and in accordance with these Amended and Restated Articles of Organization (the "Articles") and the Company's Operating Agreement; and to engage in such other lawful activities permitted to limited liability companies by the applicable laws and statutes for such entities of the State of Florida as are incidental, necessary or appropriate to the foregoing.

**ARTICLE V. LIMITATIONS**

Notwithstanding any other provision of these Articles and any provision of law that otherwise so empowers the Company, so long as any portion of the Loan (defined below) remains outstanding, the Company shall not, without the unanimous consent of its members, do any of the following:

- (i) engage in any business or activity other than those permitted hereby or own any assets other than those related to the Property;
- (ii) do any act which would make it impossible to carry on the ordinary business of the Company, except as otherwise provided in these Articles;
- (iii) borrow money or incur any indebtedness or assume or guaranty any indebtedness of any other entity, other than normal trade accounts and lease obligations incurred in the ordinary course of business, or grant consensual liens on the Company's property; except, however, the manager or managing member, as applicable, is hereby authorized to secure financing (the "Loan") for the Company from Column Financial, Inc. in such amount and on such terms as such manager or managing member may

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elect, and to grant a mortgage, deed of trust, lien or liens on the Company's property to secure such Loan, as well as incur other indebtedness to the extent expressly authorized pursuant to the documents further evidencing the Loan;

- (iv) dissolve or liquidate, in whole or in part;
- (v) sell or lease or otherwise dispose of all or substantially all of the assets of the Company except in a manner, if any, consistent with the requirements of the documents evidencing the Loan;
- (vi) institute proceedings to be adjudicated bankrupt or insolvent, or consent to the institution or bankruptcy or insolvency proceedings against it, or file a petition seeking or consenting to reorganization or relief under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestration (or other similar official) of the Company or a substantial part of property of the Company, or make any assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or take company action in furtherance of any such action;
- (vii) amend these Articles or the Operating Agreement of the Company; or
- (viii) consolidate or merge with or into any other entity.

In addition to the foregoing, the Company shall not, without the written consent of the holder of the promissory note evidencing the Loan so long as it is outstanding, take any action set forth in items (i) through (v) or items (vii) or (viii) above. Notwithstanding the foregoing, nothing in these Articles prohibit or in any way restrict the Company from taking any action permitted, contemplated or required by the Tenancy in Common Agreement dated on or around the date the Company acquires its interest in the Property, among the Company and the other owners of an undivided tenant-in-common interest in the Property (the "TIC Agreement").

#### **ARTICLE VI: TITLE TO COMPANY PROPERTY**

All property owned by the Company shall be owned by the Company as an entity and, insofar as permitted by applicable law, no member or manager shall have any ownership interest in any Company property in its individual name or right and, each membership or other ownership interest in the Company shall be personal property for all purposes.

#### **ARTICLE VII: SEPARATENESS PROVISIONS**

The Company shall:

- (a) maintain books and records and bank accounts separate from those of any other person, provided that funds received and payments made with respect to the Property may be deposited into or made from a common bank account maintained for the benefit of the Company and the other tenant in common owners of the Property;
- (b) maintain its assets in its own name and in such a manner that it is not costly or difficult to segregate, identify or ascertain such assets;
- (c) hold itself out to creditors and the public as a legal entity separate and distinct from

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any other entity;

(d) hold regular manager and member meetings, as appropriate, to conduct the business of the Company, and observe all other legal formalities;

(e) prepare separate tax returns to the extent required by applicable law and financial statements and not permit its assets to be listed as assets on the financial statements of any other entity, or if part of a consolidated group, then it will be shown as a separate member of such group;

(f) allocate and charge fairly and reasonably any common employee or overhead shared with affiliates;

(g) transact all business with affiliates on an arm's-length basis and pursuant to enforceable agreements, the terms of which are intrinsically fair, commercially reasonable and are no less favorable than would be obtained in a comparable transaction with an unrelated third party;

(h) conduct business in its own name, and use separate stationery, invoices and checks, provided that payments made with respect to the Property may be made from a common bank account maintained for the benefit of the Company and the other tenant in common owners of the Property;

(i) not commingle its assets or funds with those of any other person, provided that funds received and payments made with respect to the Property may be deposited into or made from a common bank account maintained for the benefit of the Company and the other tenant in common owners of the Property;

(j) not assume, guaranty or pay the debts or obligations of any other person or hold out its credit as being available to satisfy the obligations of others, except for the payment of an obligation of another tenant in common owner of the Property pursuant to the TIC Agreement;

(k) neither make any loans or advances to any person or entity nor hold evidence of indebtedness issued by any person or entity, except for advances made to another tenant in common owner of the Property pursuant to the TIC Agreement;

(l) timely pay all of its tax obligations;

(m) pay its own liabilities only out of its own funds, except for advances made to the Company by another tenant in common owner of the Property pursuant to the TIC Agreement;

(n) not pledge its assets for the benefit of any other entity;

(o) pay the salaries of its own employees, if any, and maintain a sufficient number of employees in light of the contemplated business operations;

(p) correct any known misunderstanding regarding its separate identity;

(q) not acquire any securities or obligations of its officers, directors, managers, members

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or any affiliate;

(r) cause the managers, members, officers, directors and other representatives of the Company to act at all times with respect to the Company consistent and in furtherance of the foregoing and in the best interests of the Company while simultaneously considering the interests of its creditors;

(s) maintain adequate capital in light of the Company's contemplated business purpose, transactions and liabilities;

(t) remain solvent and pay all of its debts and liabilities from its assets as they become due; and

(u) not identify any of its members or any affiliate thereof as a division or part of the Company, and will not identify itself as a division or part of any other entity.

#### **ARTICLE VIII: EFFECT OF BANKRUPTCY, DEATH OR INCOMPETENCY OF A MEMBER**

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, 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 membership 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. Each Member waives any right it may have to agree in writing to dissolve the Company upon the bankruptcy of any Member (or all the Members) or the occurrence of an event that causes any Member (or all the Members) to cease to be members in the Company.

#### **ARTICLE IX: SUBORDINATION OF INDEMNITIES**

All indemnification obligations of the Company are fully subordinated to any obligations relative to the Loan or respecting the Property and such indemnification obligations shall in no event constitute a claim against the Company if cash flow in excess of amounts necessary to pay obligations under the Loan is insufficient to pay such indemnification obligations.

#### **ARTICLE X. REGISTERED AGENT AND OFFICE**

The street address of the initial registered office of the limited liability company is 101 E. Kennedy Blvd., Suite 3700, Tampa, FL 33602, and the name of the Company's initial registered agent at that address is Thomas N. Henderson, III.

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HILL WARD HENDERSON

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Having been named 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.



Thomas N. Henderson, III

EXECUTED: June 4, 2004



Thomas N. Henderson, III  
Authorized Representative of Member

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