

Division of Corporations

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**L05000072173**

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**AMENDED AND RESTATED  
ARTICLES OF ORGANIZATION  
OF  
37<sup>TH</sup> AVENUE PROPERTY LLC  
(Document # L05000072173)**

The Articles of Organization of 37<sup>th</sup> Avenue Property LLC (the "Company") were filed on July 21, 2005. In accordance with Section 608.411, these Amended and Restated Articles of Organization of 37<sup>th</sup> Avenue Property LLC have been duly executed and are being filed to amend and restate in their entirety all prior articles of organization filed on behalf of the Company. The Company's Amended and Restated Articles of Organization (the "Articles") are as follows:

**ARTICLE I  
Name**

The name of this limited liability company shall remain as: 37<sup>th</sup> Avenue Property LLC

**ARTICLE II  
Principal Office Address**

The mailing address and the street address of the principal office of the limited liability company shall be 100 SE 2<sup>nd</sup> Street, Suite 2650, Miami, Florida 33131, with the privilege of having its offices and branch offices at other places within or without the State of Florida.

**ARTICLE III  
Registered Agent**

The registered office of this limited liability company is c/o Park West Parking, LLC, 100 S.E. Second Street Suite 2650, Miami, Florida 33131. The registered agent at that address is Gregory Mirmelli.

**ARTICLE IV  
Management**

This limited liability company shall be a manager-managed company. Until the members appoint a successor manager or managers (subject to the Company's operating agreement and any applicable restrictions contained in these Articles), the name and address of the Manager is as follows:

37<sup>th</sup> Avenue Property Manager, Inc.,  
a Florida corporation  
100 SE 2<sup>nd</sup> Street, Suite 2650  
Miami, Florida 33131

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### ARTICLE V

#### Business Purpose

Notwithstanding any other provision of these Articles, any other organizational documents or any provisions of law that empowers the Company, the following provisions shall be operative and controlling so long as that certain loan in the amount of \$27,000,000.00 ("Loan") by Merrill Lynch Bank USA, a Utah Industrial Bank, or its successors and/or assigns (collectively, "Lender"), made to the Company in accordance with that certain loan agreement dated on or about the date of these Articles were filed with the Florida Department of State ("Loan Agreement") to the Company is outstanding: The sole purpose of the Company is to acquire, own, hold, maintain, lease and otherwise operate a parking garage and retail spaces on that certain property located in Miami, Florida (the "Property"), together with such other activities as may be incidental to, or necessary or advisable in connection with the ownership of the Property and the operations of a parking garage and commercial retail office space (the "Business"). The Company shall only engage in the Business, and it shall have no purpose unrelated to the Property and shall not acquire any real property or own assets other than those related to the Property and/or otherwise in furtherance of the limited purposes of the Company of the operations of the Business thereon.

### ARTICLE VI

#### Certain Prohibited Activities

Notwithstanding anything to the contrary under these Articles, any other organizational document or provision of law that empowers the Company, the Company shall not, and no Member or other person or entity on behalf of the Company shall, without the prior written affirmative vote of one hundred percent (100%) of the Members: (a) institute proceedings to be adjudicated bankrupt or insolvent; (b) consent to the institution of bankruptcy or insolvency proceedings against it; (c) file a petition seeking, or consenting to, reorganization or relief under any applicable federal or state law relating to bankruptcy; (d) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or a substantial part of its property; (e) make any assignment for the benefit of creditors; (f) admit in writing its inability to pay its debts generally as they become due or declare or effect a moratorium on its debts; or (g) take any action in furtherance of any such action ((a) through (g) above, with respect to any person or entity, collectively, a "Bankruptcy Action").

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Fax Audit No: H07000117877 3**ARTICLE VII****Separateness Covenants; Manager Qualifications**

Notwithstanding anything to the contrary contained herein, for so long as the Loan remains outstanding, Company has not, and for so long as the Loan shall remain outstanding, Company shall not:

(a) engage in any business or activity other than the ownership, operation and maintenance of the Property, and activities incidental thereto as operating the Business;

(b) acquire or own any assets other than (A) the Property, and (B) such incidental Personal Property as may be necessary for the operation of the Business;

(c) merge into or consolidate with any Person, or dissolve, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(d) fail to observe all organizational formalities or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable Legal Requirements of the jurisdiction of its organization or formation, or amend, modify, terminate or fail to comply with the provisions of its organizational documents;

(e) own any subsidiary, or make any investment in, any Person;

(f) commingle its assets with the assets of any other Person;

(g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) the Debt, (B) trade and operational indebtedness incurred in the ordinary course of business with trade creditors, provided such indebtedness is (1) unsecured, (2) not evidenced by a note, (3) on commercially reasonable terms and conditions, and (4) due not more than sixty (60) days past the date incurred and paid on or prior to such date, and/or (C) financing leases and purchase money indebtedness incurred in the ordinary course of business relating to Personal Property on commercially reasonable terms and conditions; provided however, the aggregate amount of the indebtedness described in (B) and (C) shall not exceed at any time two percent (2%) of the outstanding principal amount of the Note;

(h) fail to maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person; except that Company's financial position, assets, liabilities, net worth and operating results may be included in the consolidated financial

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statements of an Affiliate, provided that such consolidated financial statements contain a footnote indicating that Company is a separate legal entity and that it maintains separate books and records;

(i) enter into any contract or agreement with any general partner, member, shareholder, principal, guarantor of the obligations of Company, or any Affiliate of the foregoing, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;

(j) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(k) assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets for the benefit of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

(l) make any loans or advances to any Person;

(m) fail to file its own tax returns or files a consolidated federal income tax return with any Person (unless prohibited or required, as the case may be, by applicable Legal Requirements);

(n) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name or fail to correct any known misunderstanding regarding its separate identity;

(o) fail to 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, provided that there are sufficient funds from the operation of the Property to do so;

(p) without the unanimous written consent of all of the Members, and the written consent of of its Manager (A) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any Creditors Rights Laws, (B) seek or consent to the appointment of a receiver, liquidator or any similar official, (C) take any action that might cause such entity to become insolvent, or (D) make an assignment for the benefit of creditors;

(q) fail to allocate shared expenses (including, without limitation, shared office space and services performed by an employee of an Affiliate) among the Persons sharing such expenses and to use separate stationery, invoices and checks;

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(r) fail to remain solvent or pay its own liabilities (including, without limitation, salaries of its own employees) only from its own funds, provided that there are sufficient funds from the operation of the Property to do so;

(s) acquire obligations or securities of its partners, members, shareholders or other affiliates, as applicable; or

(t) fail to maintain a sufficient number of employees in light of its contemplated business operations.

(u) Company, shall not allow direct and/or indirect transfers of ownership interests in the Company that would violate the provisions of the Loan Agreement, as may be amended.

(v) Company's obligation hereunder, if any, to indemnify its directors and officers, partners, members or managers, as applicable, is hereby fully subordinate to the Loan and the loan documents executed in connection therewith (the "Loan Documents") and no indemnity payment from funds of Company (as distinct from funds from other sources, such as insurance) of any indemnity hereunder, if any, shall be payable from amounts allocable to any other person pursuant to the Loan Documents.

(w) Company shall not amend, terminate or otherwise alter the provisions of this Article without Lender's prior written consent.

Company or the Company's sole Member shall at all times have a managing member (an "SPE Component Entity") that is a corporation whose sole asset is its interest in the Company and which shall act as the sole manager of the Company. The SPE Component Entity (i) will at all times comply with each of the covenants, terms and provisions contained in paragraphs (c) - (l) and (h) - (t) of this Article, as if such covenant was made directly by such SPE Component Entity; (ii) will not engage in any business or activity other than owning an interest in the Company and acting as the manager of the Company; (iii) will not acquire or own any assets other than its membership interest, or other equity interest in the Company and incidental personal property directly related to its duties as the manager of the Company; (iv) will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation) except financing leases and purchases money indebtedness incurred in the ordinary course of business to acquire personal property referred to in the preceding clause; and (v) and in its capacity as manager of the Company will conduct its affairs and the Company's affairs in a manner reasonably calculated to cause the Company to comply with the provisions of this Article. Prior to the withdrawal or the disassociation of any SPE Component Entity from the Company, the Company's members shall be required to appoint a new managing member or member who is also the manager which is a corporation and whose articles of incorporation are substantially similar to those of such SPE Component Entity.

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For purposes of these Articles, Affiliate means any person or entity, including, but not limited to, the Corporation, which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a specified person or entity. For purposes hereof, the terms "control", "controlled", or "controlling" with respect to a specified person or entity shall include, without limitation, (i) the ownership, control or power to vote ten percent (10%) or more of (x) the outstanding shares of any class of voting securities or (y) beneficial interests, of any such person or entity, as the case may be, directly or indirectly, or acting through one or more persons or entities, (ii) the control in any manner over the shareholder(s) or the election of more than one director or trustee (or persons exercising similar functions) of such person or entity, or (iii) the power to exercise, directly or indirectly, control over the management or policies of such person or entity. As used herein, the term "Person" shall mean an individual, corporation association, trust, unincorporated association, estate, partnership, joint venture, limited liability company or other legal entity, including a governmental entity.

All capitalized terms within this Section not otherwise defined herein shall have the meaning ascribed to them in that certain Loan Agreement between Company and Lender, as may be amended.

#### ARTICLE VIII

##### Voting

Notwithstanding any provision hereof to the contrary, the following shall govern so long as the Loan remains outstanding: When acting on matters subject to the vote of the members, notwithstanding that the Company is not then insolvent, all of the Members shall take into account the interest of the Company's creditors, as well as those of the Members.

#### ARTICLE IX

##### Indemnification

This Company shall indemnify and may insure its officers and managers to the fullest extent permitted by law; provided, however, notwithstanding anything to the contrary in these Articles, for so long as the Loan is outstanding, any indemnification obligation of the Company shall (a) be fully subordinated to the Loan and (b) not constitute a claim against the Company or its assets until such time as the Loan has been paid in accordance with its terms and otherwise has been fully discharged.

#### ARTICLE X

##### Amendments

For so long as the Loan remains outstanding, without the Lender's prior written consent no amendment of Articles V through X of these Articles may be made.

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IN WITNESS WHEREOF, the undersigned has executed these Amended and Restated Articles of Organization this 27 day of April, 2007.

**37<sup>th</sup> Avenue Property, LLC, a Florida  
limited liability company**

By: 37<sup>th</sup> Avenue Property Manager,  
Inc., a Florida corporation

**Its: Managing Member**

By: Gregory Mirmelli  
Gregory Mirmelli, President

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Fax Audit No. H07000117877 3**CERTIFICATE OF DESIGNATION OF  
REGISTERED AGENT/REGISTERED OFFICE**

Pursuant to the provisions of section 608.415, Florida Statutes, the limited liability company referenced below submits the following statement in designating the registered office/registered agent, in the State of Florida.

FIRST -- The name of the limited liability company is 37<sup>th</sup> Avenue Property, LLC.

SECOND -- The name and address of the registered agent and office: Gregory Mirmelli, c/o Park West Parking, LLC, 100 S.E. Second Street, Suite 2650, Miami, Florida 33131

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.

Dated this 31 day of April, 2007.

By: \_\_\_\_\_  
Gregory Mirmelli

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