

L05000120846

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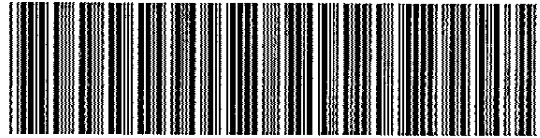
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CORPORATION SERVICE COMPANY

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ACCOUNT NO. : 072100000032

REFERENCE : 742256 7539444

AUTHORIZATION

COST LIMIT : \$ 55.00

*[Signature]*

ORDER DATE : February 2, 2007

ORDER TIME : 3:30 PM

ORDER NO. : 742256-005

CUSTOMER NO: 7539444

DOMESTIC AMENDMENT FILING

NAME: SUTTON PROPERTIES OF BREVARD,  
LC

EFFECTIVE DATE:

XX RESTATED ARTICLES OF ORGANIZATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY

CONTACT PERSON: Troy Todd -- EXT# 2940

EXAMINER'S INITIALS: \_\_\_\_\_

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**AMENDED AND RESTATED ARTICLES OF ORGANIZATION  
OF  
SUTTON PROPERTIES OF BREVARD, LC**

The undersigned persons hereby adopt this Amended and Restated Articles of Organization in order to further amend and restate the Articles of Organization of Sutton Properties of Brevard, LC which are executed and being filed in accordance with Chapter 608.411 Florida Statutes

**ARTICLE I – NAME**

The name of this limited liability company is Sutton Properties of Brevard, LC

**ARTICLE II- FORMATION**

The Articles of Organization for Sutton Properties of Brevard, LC was filed on December 16, 2005 under Document number L05000120846 and amended by Articles of Amendment to Articles of Organization filed on February 16, 2006.

**ARTICLE III – DURATION**

The Company existence commenced upon the execution of the Articles of Organization and shall exist perpetually.

**ARTICLE IV – ADDRESS**

The street address of the principal place of business of the Company is 2174 Harris Avenue, N.E., Palm Bay, Florida 32905. The mailing address is Post Office Box 060250, Palm Bay, Florida, 32906-0250. These addresses may be changed from time to time as provided in the Operating Agreement.

**ARTICLE V- PURPOSE**

The business and purpose of Sutton Properties of Brevard, LC, hereinafter “Company”, shall consist solely of the following:

(i) The acquisition, ownership, operation and management of the real estate project located at Brevard County, Florida (the “Property”) and as legally described in Exhibit A (attached hereto), pursuant to and in accordance with these Amended and Restated Articles of Organization; and

(ii) to engage in such other lawful activities permitted to corporations under Chapter 608 Florida Statutes, as are incidental, necessary or appropriate to the foregoing.

## **ARTICLE VI - LIMITATIONS**

Notwithstanding any other provision of these Amended and Restated Articles and any provision of law that otherwise empowers the Company and so long as any obligations secured by a first priority mortgage, deed of trust or deed to secure debt incurred in connection with any financing of the Property (a "Security Instrument") remain outstanding and not discharged in full, 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 set forth in Article V;
- (ii) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than obligations secured by the Security Instrument, except unsecured trade and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Property in such amounts as are normal and reasonable under the circumstances, provided that such debt is not evidenced by a note and is paid when due or within 60 days of the date incurred, whichever is earlier, and provided in any event the outstanding principal balance of such debt shall not exceed at any one time one percent (1%) of the outstanding obligations secured by the Security Instrument;
- (iii) seek the dissolution or winding up, in whole or in part, of the Company;
- (iv) cause the Company to 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;
- (v) file a voluntary petition or otherwise initiate proceedings to have the Company adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company, or file a petition seeking or consenting to reorganization or relief of the Company as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Company; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Company or of all or any substantial part of the properties and assets of the Company, or make any general assignment for the benefit of creditors of the Company, or admit in writing the inability of the Company to pay its debts generally as they become due or declare or effect a moratorium on the Company debt or take any action in furtherance of any such action; or
- (vi) amend Articles V, VI, VII, VIII, IX, X, XI and XII of these Amended and Restated Articles of Organization.

In addition to the foregoing, so long as any obligation secured by the Security Instrument remains outstanding and not discharged in full, the LLC shall not without the written consent of the holder the Security Instrument, take any action set forth in items (i) through (iv) and item (vi).

## **ARTICLE VII- SEPARATENESS/OPERATIONS MATTERS**

The Company has not and shall not:

(a) acquire or own any material asset other than (i) the Property, and (ii) such incidental personal property as may be necessary for the ownership, operation and maintenance of the Property;

(b) fail to observe its organizational formalities or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of the holder of the Security Instrument, amend, modify, terminate or fail to comply with the provisions of these Amended and Restated Articles of Organization, or its Operating Agreement;

(c) own any subsidiary or make any investment in or acquire the obligations or securities of any other person or entity without the consent of the holder of the Security Instrument;

(d) commingle its assets with the assets of any member, principal or affiliate of the Company, or of any other person or entity or transfer any assets to any such person or entity other than distributions on account of equity interests in the Company permitted by the Security Instrument and properly accounted for;

(e) allow any person or entity to pay its debts and liabilities (except for a Guarantor or Indemnitor (as defined in the Security Instrument)) or fail to pay its debts and liabilities solely from its own assets when the same shall become due;

(f) (i) fail to maintain its records, books of account and bank accounts separate and apart from those of the members, principals and affiliates of the Company, the affiliates of the members of the Company and any other person or entity or fail to prepare and maintain its own financial statements in accordance with generally accepted accounting principles and susceptible to audit, or if such financial statements are consolidated fail to cause such financial statements to contain footnotes disclosing that the Property is actually owned by the Company or (ii) permit its assets or liabilities to be listed as assets or liabilities on the financial statement of any other entity or person, or (iii) include the assets or liabilities of any other person or entity on its financial statements;

(g) enter into any contract or agreement with any member, principal or affiliate of the Company or any guarantor of all or a portion of the obligations secured by the Security Instrument or any partner, member, principal or affiliate thereof, except upon terms and conditions that are acceptable to Lender and intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any member, principal or affiliate of the Company, as the case may be, or any guarantor or any partner, member, principal or affiliate thereof;

(h) fail to correct any known misunderstandings regarding the separate identity of the Company or any member, general partner, principal or affiliate thereof or any other person;

(i) hold itself out to be responsible or guarantee, become obligated, pledge its assets or credit worthiness for the debts of another person or entity or allow any person or entity to hold itself out to be responsible or pledge its assets or credit worthiness for the debts of the Company (except for a Guarantor or Indemnitor (as defined in the Security Instrument));

(j) make any loans or advances to any third party, including any member, principal or affiliate of the Company, or any member, partner, member, principal or affiliate thereof or acquire obligations or securities of any member, general partner, principal or affiliate of the Company, or any member, general partner, or affiliate thereof;

(k) fail to file its own tax returns or to use separate contracts, purchase orders, stationery, invoices and checks;

(l) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that the Company is responsible for the debts of any third party (including any member, principal or affiliate of the Company or any member, partner, member, principal or affiliate thereof);

(m) fail to allocate fairly and reasonably among the Company and any third party (including, without limitation, any guarantor) any overhead for common employees, shared office space or other overhead and administrative expenses;

(n) allow any person or entity to pay the salaries of its own employees or fail to maintain a sufficient number of employees for its contemplated business operations;

(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;

(p) share any common logo with or hold itself out as or be considered as a department or division of (i) any member, principal, or affiliate of the Company, (ii) any affiliate of a member of the Company, or (iii) any other person or entity or allow any person or entity to identify the Company as a department or division of that person or entity; or

(q) conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of the Company or the creditors of any other person or entity.

#### **ARTICLE VIII: 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 shall have any ownership interest in any Company property in its individual name or right, and each Member's Membership Interest shall be personal property for all purposes.

#### **ARTICLE IX: SEPARATENESS/OPERATIONS MATTERS.**

The Company shall:

(a) maintain books and records and bank accounts separate from those of any other person;

(b) maintain its assets in such a manner that it is not costly or difficult to segregate, identify or ascertain such assets;

(c) hold regular meetings, as appropriate, to conduct the business of the Company, and observe all customary organizational and operational formalities;

(d) hold itself out to creditors and the public as a legal entity separate and distinct from any other entity;

(e) prepare separate tax returns and financial statements, 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 and maintain a sufficient number of employees in light of its contemplated business operations;

(g) transact all business with affiliates on an arm's-length basis and pursuant to enforceable agreements;

(h) conduct business in its own name, and use separate stationery, invoices and checks;

(i) not commingle its assets or funds with those of any other person;

(j) not assume, guarantee or pay the debts or obligations of any other person;

(k) pay its own liabilities out of its own funds;

(l) not acquire obligations or securities of its members;

(m) not pledge its assets for the benefit of any other entity or make any loans or advances to any entity;

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

(o) maintain adequate capital in light of its contemplated business operations; and

(p) maintain all required qualifications to do business in the state in which the Property is located.

**ARTICLE X: EFFECT OF BANKRUPTCY, DEATH, INCOMPETENCY OR  
WITHDRAWAL 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 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. In the event that the Company has only one Member, such Member may not withdraw as a Member of the Company without the prior written consent of the Lender, which consent may be granted, withheld or conditioned in the Lender's sole discretion, including, without limitation, the condition that a succeeding Member acceptable to Lender in Lender's sole discretion exist and succeed the withdrawing Member so that the operations and existence of the Company continue. The foregoing shall apply to the fullest extent permitted by applicable law.

#### **ARTICLE XI- SUBORDINATION OF INDEMNIFICATION PROVISIONS**

**NOTWITHSTANDING ANY PROVISION HEREOF TO THE CONTRARY, ANY INDEMNIFICATION CLAIM AGAINST THE COMPANY ARISING UNDER THESE AMENDED AND RESTATED ARTICLES, THE OPERATING AGREEMENT OR THE LAWS OF THE STATE OF ORGANIZATION OF THE COMPANY SHALL BE FULLY SUBORDINATE TO ANY OBLIGATIONS OF THE COMPANY ARISING UNDER THE SECURITY INSTRUMENT OR ANY OTHER LOAN DOCUMENT (AS DEFINED THEREIN), AND SHALL ONLY CONSTITUTE A CLAIM AGAINST THE COMPANY TO THE EXTENT OF, AND SHALL BE PAID BY THE COMPANY IN MONTHLY INSTALLMENTS ONLY FROM, THE EXCESS OF NET OPERATING INCOME OF THE COMPANY FOR ANY MONTH OVER ALL AMOUNTS THEN DUE UNDER THE SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS.**

#### **ARTICLE XII: GOVERNING PROVISIONS.**

In the event of any conflicts between the terms and conditions of these Amended and Restated Articles of Organization and the Company's Operating Agreement or similar organizational documents, the terms and conditions of these Amended and Restated Articles of Organization shall govern, but only to the extent of any such conflicts.

#### **ARTICLE XIII – REGISTERED AGENT**

The address in Florida of the registered office of the Company is 2174 Harris Avenue, N.E., Palm Bay, Florida 32905 and the name of the Registered Agent of the Company at that address is Fred E. Sutton.



**ARTICLE XIV – ADMISSION OF ADDITIONAL MEMBERS**

Additional Members may be admitted at such times and on such terms and conditions as all Members may unanimously agree and as provided in the Operating Agreement of the Company.

**ARTICLE XV – MEMBERS' RIGHTS TO CONTINUE BUSINESS**

The remaining Member(s) of the Company may continue the business upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member or the occurrence of any other event which terminates the continued membership of a Member in the Company upon unanimous agreement and as provided in the Operating Agreement of the Company.

**ARTICLE XVI – MANAGEMENT**

The Company shall be managed by one (1) manager. The name and address of such initial manager is as follows:

Fred E. Sutton  
2174 Harris Avenue N. E.  
Palm Bay, Florida, 32905


**ARTICLE XVII – ADOPTION OF REGULATIONS**

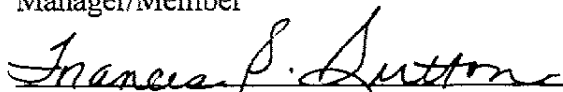
The Members of the Company shall adopt regulations contained within an Operating Agreement which shall contain provisions for the management of the business and the regulation of the affairs of the Company that are not inconsistent with the Articles or the laws of the State of Florida.

**ARTICLE XVIII- INDEMNIFICATION**

Except as expressly provided in the Operating Agreement, the Company shall indemnify any member, manager, or former member or manager to the full extent permitted under the Act.

IN WITNESS WHEREOF, We have signed these Amended and Restated Articles of Organization and acknowledged them to be our act this the 31 day of January, 2007.

  
FRED E. SUTTON  
Manager/Member

  
FRANCES S. SUTTON, TRUSTEE OF THE  
HAROLD S. SUTTON REVOCABLE TRUST  
UTD March 17, 2004

Fred E. Sutton

FRED E. SUTTON, CO-TRUSTEE OF  
DIANNE B. SUTTON TRUST ESTABLISHED  
UNDER THE DIANNE B. SUTTON WILL  
DATED OCTOBER 22, 2003

Fred C. Sutton

FRED C. SUTTON, CO-TRUSTEE OF  
DIANNE B. SUTTON TRUST ESTABLISHED  
UNDER THE DIANNE B. SUTTON WILL  
DATED OCTOBER 22, 2003

In accordance with Section 608.408(3) Florida Statutes, the execution of this Affidavit constitutes an affirmation under the penalties of perjury that the facts herein stated are true.

Fred E. Sutton

Fred E. Sutton  
Manager/Member

## **Exhibit A**

### **Legal Description**

A part of Section 33, Township 27 South, Range 37 East, Brevard County, Florida, being more particularly described as follows: From the West 1/4 corner of Section 33, Township 27 South, Range 37 East, Brevard County, Florida, run N 82 degrees 28 minutes 01 seconds E a distance of 1400.17 feet to the intersection of the centerline of Harry Sutton Road and Nasa Boulevard; thence N 68 degrees 52 minutes 51 seconds E along said centerline of Nasa Boulevard a distance of 49.99 feet; thence S 21 degrees 07 minutes 09 seconds E a distance of 50.00 feet to a point on the Southerly right-of-way line of Nasa Boulevard; thence N 68 degrees 52 minutes 51 seconds E along said Southerly right-of-way line of Nasa Boulevard a distance of 785.29 feet to the Easterly right-of-way line of Eddie Allen Road and the Point of Beginning of the herein described parcel; thence continue N 68 degrees 52 minutes 51 seconds E along said Southerly right-of-way line of Nasa Boulevard a distance of 329.00 feet; S 21 degrees 06 minutes 06 seconds E a distance of 473.71 feet to a point on the Northerly right-of-way line of Harvey Ogden Road; thence S 69 degrees 00 minutes 10 seconds W along said Northerly right-of-way line of Harvey Ogden Road a distance of 329.00 feet to a point on the aforesaid Easterly right-of-way line of Eddie Allen Road; thence N 21 degrees 06 minutes 06 seconds W along said Easterly right-of-way line a distance of 473.01 feet to the Point of Beginning.