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CORPORATION SERVICE COMPANY

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REFERENCE : 595730 120708A  
AUTHORIZATION : *Patricia Pizzuto*  
COST LIMIT : \$ 55.00

ORDER DATE : September 14, 2005

ORDER TIME : 12:07 PM

ORDER NO. : 595730-005

CUSTOMER NO: 120708A

CUSTOMER: Ms. Sally M. Sorrels  
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DOMESTIC AMENDMENT FILING

NAME: HORSESHOE PARK OF COMMERCE,  
L.C.

EFFECTIVE DATE:

XX RESTATED ARTICLES OF ORGANIZATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

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CONTACT PERSON: Cindy Harris -- EXT# 2937

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

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TALLAHASSEE, FLORIDA

**AMENDED AND RESTATED ARTICLES OF ORGANIZATION**  
**OF**  
**HORSESHOE PARK OF COMMERCE, L.C., A LIMITED LIABILITY COMPANY**  
(Filed in accordance with 608.411, F.S.)  
=====

**ARTICLE I**

**AMENDED AND RESTATED ARTICLES OF ORGANIZATION**

These Amended and Restated Articles of Organization for **HORSESHOE PARK OF COMMERCE, L.C., a Florida Limited Liability Company**, for which Articles of Organization were initially filed on October 7, 1998 under document number L98000002189, are adopted and approved by all members for the purpose of amending and restating same as herein provided.

**ARTICLE II**

**NAME**

The name of this limited liability company is **HORSESHOE PARK OF COMMERCE, L.C.**, referred to herein as the "Company."

**ARTICLE III**

**PRINCIPAL OFFICE AND AGENT**

The principal office and mailing address of the Company is 3703 South Horseshoe Drive, Suite 118, Naples, FL 34104. The Company's registered agent is Dean A. Arnold, whose office is located at 3703 South Horseshoe Drive, Suite 118, Naples, FL 34104.

**ARTICLE IV**

**DURATION**

Unless affirmatively dissolved, the Company shall have perpetual duration.

**ARTICLE V**

**ORGANIZER**

The organizer of the Company was Dean A. Arnold, a natural person at least eighteen (18) years old.

**ARTICLE VI**  
**PURPOSE AND POWERS**

This Company shall have the following purposes and powers .

**PURPOSE.**

The Company's business and purpose shall consist solely of the acquisition, ownership, operation and management of the real estate project known as 3073 South Horseshoe Drive, located in Naples, Florida (the "Property") and such activities as are necessary, incidental or appropriate in connection therewith.

**POWERS AND DUTIES.**

Notwithstanding any other provisions of these Articles and so long as any obligations secured by the Mortgage (as defined below) remain outstanding and not discharged in full, without the consent of all members, the Managing Member shall have no authority to:

(i) borrow money or incur indebtedness on behalf of the Company other than normal trade accounts payable and lease obligations in the normal course of business, or grant consensual liens on the Company's property; except, however, that the Managing Member is hereby authorized to secure financing for the Company pursuant to the terms of that certain Note in the original principal amount of \$8,500,000.00 (the "Note") and other indebtedness expressly permitted therein or in the documents executed in connection with or as security for such Note (collectively, the "Loan"), and to grant a mortgage, lien or liens on the Company's Property to secure the Loan (the "Mortgage");

(ii) dissolve or liquidate the Company;

(iii) sell or lease, or otherwise dispose of all or substantially all of the assets of the Company;

(iv) 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 action;

(v) amend, modify or alter these Articles; or

(vi) merge or consolidate with any other entity.

Notwithstanding the foregoing and so long as any obligation secured by the Mortgage remains outstanding and not discharged in full, the Managing Member shall have no authority (1) to take any action in items (i) through (iii) and (v) and (vi) without the prior written consent of the holder of the Mortgage.

#### **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.

**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;
- 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; and
- j) not assume, guarantee or pay the debts or obligations of any other person.

**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 Company 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. [The foregoing shall apply to the extent permitted by applicable law.]

**ARTICLE VII**

**MANAGEMENT BY MANAGING MEMBER**

**Section 7.01      Designation of Managing Member**

(a) Managing Member. The Company will be managed by a sole managing member. The current sole managing member shall be Horseshoe Park of Commerce Manager, LLC, a Delaware Managing Member, whose address is 3073 South Horseshoe Drive, Suite 118, Naples, FL 34104, who shall serve until the next scheduled annual elections of the Company. Reference herein to "managing member" shall refer to such person or entity elected to serve as the managing member of the Company.

(b) Removal. The member(s) may remove a managing member, without having to possess, state, or prove cause, by

(i) a vote of members holding 100 percent of the voting power of all membership interests, excluding any voting power held by the managing member whose removal is sought. The vote must be taken at a properly scheduled meeting of the members, and a managing member whose removal is sought may not vote, or

(ii) written consent of members holding 100 percent of the voting power of all membership interests, excluding any voting power held by the managing member whose removal is sought.

The removal of a managing member without stating or proving cause does not bar a later claim that the managing member engaged in misconduct while a managing member.

(c) Resignation. A managing member may resign by providing written notice to all members, using the means of notice stated in the Company's operating agreement for giving notice to members. If the operating agreement does not specify a means of giving notice, the managing member must give notice by a means sufficient under the laws of the State of Florida. The resignation shall take effect ten (10) days after the date the managing member gives notice to all members, or at a later date stated in the notice of resignation.

(d) Interim Management. Once the resignation of a managing member is effective or the members remove the managing member, the Company will be managed by the remaining managing member until a replacement managing member is chosen with the majority consent of the members.

(e) Replacement Managing Member. The members will elect a replacement managing member at a properly scheduled meeting of the members. The vote of members holding a majority of the voting power of all membership interests is necessary to elect a replacement managing member. In the case of the removal of a managing member under Section 6.01(b)(i), the same meeting that votes removal may also elect a replacement managing member. Once elected, the replacement



managing member will have all of the powers and duties of the initial managing member.

**Section 7.02            Authority of the Managing Member.**

Managing Member's Operational Authority. The managing member has authority, in the name, and on behalf, of the Company to sign and deliver all contracts, agreements, leases, notes, mortgages and other documents and instruments which are necessary, appropriate or convenient for the conduct of the Company's business and the furtherance of its purposes. The signature of the managing member herein named is required to bind the Company. This provision does not alter or waive any duty that the managing member may have to the Company concerning a managing member's exercise of management authority.

**Section 7.03            Nonliability of Managing Member for Acts or Omissions in Official Capacity**

The managing member is released from liability for damages and other monetary relief to the full extent permitted by the laws of the State of Florida.

**Section 7.04            No Authority of Members**

Except as authorized by the managing member, no member is an agent of the Company or has the authority to make any contracts, enter into any transactions, or make any commitments on behalf of the Company.

**ARTICLE VIII**

**IDENTIFICATION OF MANAGING MEMBER**

The name and address of the managing member of the Company are:

HORSESHOE PARK OF COMMERCE MANAGER, LLC  
3073 SOUTH HORSESHOE DRIVE, SUITE 118  
NAPLES, FLORIDA 34104

**ARTICLE IX**  
**CONTRIBUTIONS**

The member(s) have each contributed to the Company \$100.00 in cash.

**ARTICLE X**  
**ADMISSION OF NEW MEMBERS**

The Company may admit new members only upon the unanimous written consent of all members as provided in the Company's operating agreement.

**ARTICLE XI**  
**DISSOLUTION**

**Section 11.01      Dissolution and Dissolution Avoidance Following the  
Dissociation of a Member**

(a) Dissociation Defined. "Dissociation of a member" or "dissociation" occurs when the Company has notice or knowledge of an event that has terminated a member's continued membership in the Company.

(b) Means of Avoiding Dissolution Following Member Dissociation.

(i) To avoid dissolution under this Section 10.01(b), the Company must have at least one remaining member.

(ii) In addition to any means for avoiding dissolution provided by statute, dissolution is avoided upon the dissociation of a member if, within five (5) days of the dissociation, consent to avoid dissolution is obtained from all of the remaining members. The consent may be by vote, at a properly called member meeting, or in writing.

**ARTICLE XII**  
**DISTRIBUTIONS**

**Section 12.01      Interim Distributions**

The Company may make interim distributions of property to its members as agreed to by all of the members.

**Section 12.02      Winding-Up Distributions**

The Company may make winding-up distributions of property to its members as agreed by all of the members.

**ARTICLE XIII**

**RELATIONSHIP OF ARTICLES OF ORGANIZATION TO OPERATING  
AGREEMENT**

If a provision of these Articles of Organization differs from a provision of the Company's operating agreement, then, to the extent allowed by law, the operating agreement will govern.

Executed by the undersigned, constituting all of the Members, this \_\_\_\_ day of August, 2005.

DEAN A. ARNOLD, TRUSTEE OF THE  
DEAN A. ARNOLD TRUST/ Member

By: 

DEAN A. ARNOLD, Trustee

ARNOLD FAMILY LIMITED PARTNERSHIP,  
A Florida Limited Partnership/Member

By: 

DEAN A. ARNOLD, General Partner

By: 

JOHN LEE ARNOLD, II, General Partner

  
JOHN LEE ARNOLD, II/Member

  
ANTHONY WRIGHT/Member

Tamara Q. Wright

TAMARA WRIGHT/Member

Michael Jeppesen

MICHAEL JEPPESEN/Member

Andrea Jeppesen

ANDREA JEPPESEN/Member

HORSESHOE PARK OF COMMERCE  
MANAGER, LLC, a Delaware Limited Liability  
Company/ Member/Managing Member

By: Dean A. Arnold

DEAN A. ARNOLD, Manager

STATE OF FLORIDA  
COUNTY OF COLLIER

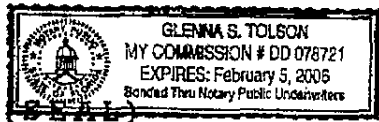
The foregoing instrument was acknowledged before me on this 13<sup>th</sup> day of  
September, 2005, by **DEAN A. ARNOLD, TRUSTEE OF THE DEAN A. ARNOLD**  
**TRUST** who is personally known to me (or has produced  
\_\_\_\_\_ as identification) and who did/did not take an  
oath.




Glenna S. Tolson  
NOTARY PUBLIC  
Print Name GLENN S. TOLSON  
Commission Number - \_\_\_\_\_  
My Commission Expires: 2/5/06

STATE OF FLORIDA  
COUNTY OF COLLIER

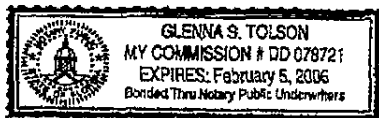
The foregoing instrument was acknowledged before me on this 12<sup>TH</sup> day of September, 2005, by **DEAN A. ARNOLD** and **JOHN LEE ARNOLD, II, GENERAL PARTNERS OF ARNOLD FAMILY LIMITED PARTNERSHIP**, a Florida Limited Partnership, on behalf of the partnership who are personally known to me (or has produced \_\_\_\_\_ and \_\_\_\_\_ as identification) and who did/did not take an oath.




  
NOTARY PUBLIC  
Print Name GLENN A. S. TOLSON  
Commission Number - \_\_\_\_\_  
My Commission Expires: 2/5/06

STATE OF FLORIDA  
COUNTY OF COLLIER

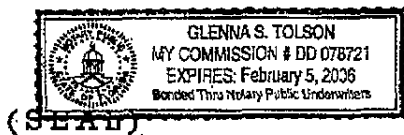
The foregoing instrument was acknowledged before me on this 12<sup>TH</sup> day of September, 2005, by **JOHN LEE ARNOLD, II** who is personally known to me (or has produced \_\_\_\_\_ as identification) and who did/did not take an oath.



  
NOTARY PUBLIC  
Print Name GLENN A. S. TOLSON  
Commission Number - \_\_\_\_\_  
My Commission Expires: 2/5/06

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me on this 13<sup>TH</sup> day of  
September, 2005, by **ANTHONY WRIGHT** who is personally known to me (or has  
produced \_\_\_\_\_ as identification) and who did/did not  
take an oath.



*Glenna S. Tolson*  
\_\_\_\_\_  
NOTARY PUBLIC  
Print Name GLENN A. S. TOLSON  
Commission Number - \_\_\_\_\_  
My Commission Expires: 2/5/06

STATE OF FLORIDA  
COUNTY OF COLLIER

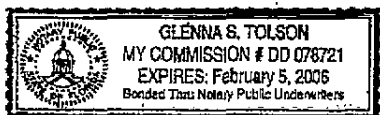
The foregoing instrument was acknowledged before me on this 13<sup>TH</sup> day of  
September, 2005, by **TAMARA WRIGHT** who is personally known to me (or has  
produced \_\_\_\_\_ as identification) and who did/did not  
take an oath.



*Glenna S. Tolson*  
\_\_\_\_\_  
NOTARY PUBLIC  
Print Name GLENN A. S. TOLSON  
Commission Number - \_\_\_\_\_  
My Commission Expires: 2/5/06

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me on this 13<sup>TH</sup> day of September, 2005, by **MICHAEL JEPPESEN** who is personally known to me (or has produced \_\_\_\_\_ as identification) and who did/did not take an oath.

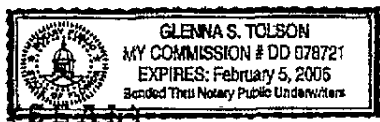


(SEAL)

*Glenna S. Tolson*  
NOTARY PUBLIC  
Print Name GLENNNA S. TOLSON  
Commission Number - \_\_\_\_\_  
My Commission Expires: 2/5/06

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me on this 13<sup>TH</sup> day of September, 2005, by **ANDREA JEPPESEN** who is personally known to me (or has produced \_\_\_\_\_ as identification) and who did/did not take an oath.

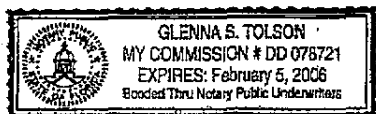


(SEAL)


*Glenna S. Tolson*  
NOTARY PUBLIC  
Print Name GLENNNA S. TOLSON  
Commission Number - \_\_\_\_\_  
My Commission Expires: 2/5/06

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me on this 13<sup>th</sup> day of September, 2005, by **DEAN A. ARNOLD, MANAGER OF HORSESHOE PARK OF COMMERCE MANAGER, LLC**, a Delaware Limited Liability Company, on behalf of the Company, who is personally known to me (or has produced \_\_\_\_\_ as identification) and who did/did not take an oath.



(SEAL)

  
NOTARY PUBLIC  
Print Name - GLENN A. TOLSON  
Commission Number - \_\_\_\_\_  
My Commission Expires: 2/5/06



**CERTIFICATE OF DESIGNATION OF REGISTERED AGENT/REGISTERED  
OFFICE**

Pursuant to the provisions of Section 608.415, Florida Statutes, the undersigned limited liability company submits the following statement in designating the principal office/registered agent in the State of Florida

1. The name of the limited liability company is **HORSESHOE PARK OF  
COMMERCE, L.C.**

2. The name and address of the registered agent and principal office is:

Dean A. Arnold  
3073 South Horseshoe Drive, Suite 118  
Naples, FL 34104

\* \* \* \*

**ACKNOWLEDGMENT AND ACCEPTANCE**

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 13<sup>th</sup> day of September, 2005.

  
\_\_\_\_\_  
DEAN A. ARNOLD, Registered Agent