

Florida Department of State

Division of Corporations
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(((H16000159126 3)))



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To:

Division of Corporations
Fax Number : (850) 617-6380

From:

Account Name : SHUTTS & BOWEN LLP (ORLANDO)
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Phone : (407) 835-6769
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****Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.****

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COR AMND/RESTATE/CORRECT OR O/D RESIGN
MDR PLAZA, INC.

Certificate of Status	0
Certified Copy	0
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FILED
16 JUN 30 PM 4:53
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Articles of Amendment
to
Articles of Incorporation
of
MDR PLAZA, INC.

(((H16000159126 3)))

(Name of Corporation as currently filed with the Florida Dept. of State)

P97000080064

(Document Number of Corporation (if known))

Pursuant to the provisions of section 607.1006, Florida Statutes, this *Florida Profit Corporation* adopts the following amendment(s) to its Articles of Incorporation:

A. If amending name, enter the new name of the corporation:

The new name must be distinguishable and contain the word "corporation," "company," or "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.," or the designation "Corp.," "Inc.," or "Co.". A professional corporation name must contain the word "chartered," "professional association," or the abbreviation "P.A."

B. Enter new principal office address, if applicable:

(Principal office address MUST BE A STREET ADDRESS)

5454 Wisconsin Ave, Suite 1265

Chevy Chase, MD 20815

C. Enter new mailing address, if applicable:

(Mailing address MAY BE A POST OFFICE BOX)

5454 Wisconsin Ave, Suite 1265

Chevy Chase, MD 20815

D. If amending or adding additional Articles, enter change(s) here: (Attach additional sheets, if necessary). (Be specific)

Exhibit "A" to these Articles of Amendment of Articles of Incorporation is incorporated herein by this reference thereto.

E. If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself:

(if not applicable, indicate N/A)

N/A

F. If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself:

(if not applicable, indicate N/A)

N/A

The date of each amendment(s) adoption: _____, if other than the date this document was signed.

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Effective date if applicable: _____
(no more than 90 days after amendment file date)

Note: If the date inserted in this block does not meet the applicable statutory filing requirements, this date will not be listed as the document's effective date on the Department of State's records.

Adoption of Amendment(s) (CHECK ONE)

☒ The amendment(s) was/were adopted by the shareholders. The number of votes cast for the amendment(s) by the shareholders was/were sufficient for approval.

☐ The amendment(s) was/were approved by the shareholders through voting groups. The following statement must be separately provided for each voting group entitled to vote separately on the amendment(s):

"The number of votes cast for the amendment(s) was/were sufficient for approval

by _____"
(voting group)

☐ The amendment(s) was/were adopted by the board of directors without shareholder action and shareholder action was not required.

☐ The amendment(s) was/were adopted by the incorporators without shareholder action and shareholder action was not required.

Dated 30 June 2010

Signature _____

(By a director, president or other officer - if directors or officers have not been selected, by an incorporator - if in the hands of a receiver, trustee, or other court appointed fiduciary by that fiduciary)

Name and Title of Person Signing: Michael D. Rubin, President

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EXHIBIT "A" TO ARTICLES OF AMENDMENT
TO ARTICLES OF INCORPORATION OF
MDR PLAZA, INC.

(((H16000159126 3)))

This is Exhibit "A" to the Articles of Amendment to the Articles of Incorporation of MDR Plaza, Inc., which is the sole general partner of Plaza on Main Limited Partnership containing additional amendments to those in said Articles of Amendment and is made in contemplation of the closing of a first mortgage loan from Silverpeak Real Estate Finance, Inc. to said limited partnership encumbering the Property (defined herein). Accordingly, the following provisions are added to the Articles of Amendment to the Articles of Incorporation of MDR Plaza, Inc.

1. Article Fourth of the Agreement (defined herein as the Articles of Incorporation) is modified to read as follows:

Purpose. Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management, or operation of the Corporation, the sole purpose to be conducted or promoted by the Corporation has been since its formation and shall continue to be to engage in the following activities:

(i) to acquire, own, hold and maintain general partnership interests (the "Interests") in Plaza On Main Limited Partnership, a Florida limited partnership (the "Partnership"), whose purpose is to acquire, own, hold, lease, operate, manage, maintain, develop, improve sell, transfer, service, convey, dispose of, pledge, assign, borrow money against, finance, refinance or otherwise deal with that certain real property known as Plaza on Main Shopping Center, 1708 North Maine Street, Kissimmee, Florida, on land described in Schedule I attached hereto and incorporated herein (the "Property" or the "Project"); and

(ii) act as the general partner of the Partnership.

2. A new Article Ninth is added to the Agreement (defined herein as the Articles of Incorporation), which shall read as follows:

9.1 DEFINITIONS. Initial capitalized terms in the Agreement shall have the meanings set forth in this Article Ninth. Any initial capitalized term that is not defined in this Article Ninth or elsewhere in this Agreement shall have the meanings for such terms that is set forth in the Loan Agreement.

"Act" means the Florida Business Corporation Act, Sections 607.0101-607.192, Florida Statutes, as hereafter amended or modified.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such Person or any Person who has a familial relationship, by blood, marriage or otherwise with the Corporation or any Affiliate of the Corporation.

"Agreement" means the Article of Incorporation of the Corporation dated as of September 15, 1997 as amended by Articles of Amendment to Articles of Incorporation of MDR Plaza, Inc. dated October 25, 2006, together with the schedules and exhibits attached hereto (including this Exhibit A), as it may be further amended, restated or supplemented or otherwise modified from time to time.

"Applicable Law" has the meaning set forth in the Loan Agreement.

"Bankruptcy" means with respect to any Person, if such Person (i) makes an assignment for the benefit of creditors, (ii) files a voluntary petition in bankruptcy, (iii) is adjudged a bankrupt or insolvent, or has

entered against it an order for relief in any bankruptcy or insolvency proceeding, (iv) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, (vi) seeks, consents to or acquiesces in the appointment of a trustee, receiver, liquidator of the Person or of all or any substantial part of its properties, or (vii) if 120 days after the commencement of any proceeding against the Person seeking reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, if the proceeding has not been dismissed, or if within 90 days after the appointment without such Person's consent or acquiescence of a trustee, receiver or liquidator of such Person or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated. The foregoing definition of "Bankruptcy" is intended to replace and shall supersede and replace any definition of "Bankruptcy" set forth in the Act.

"Bankruptcy Action" means, with respect to any Person, (a) such Person filing a voluntary petition under the United States Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the United States Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such Person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the United States Bankruptcy Code or any other Federal or state bankruptcy or insolvency law, or soliciting or causing to be solicited petitioning creditors for any involuntary petition from any Person; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, assignee, sequestrator, liquidator, or examiner (or similar official) for such Person or any portion of its property, (e) the filing of a petition against a Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the United States Bankruptcy Code or any other applicable law, (f) under the provisions of any other law for the relief or aid of debtors, an action taken by any court of competent jurisdiction that allows such court to assume custody or Control of a Person or of the whole or any substantial part of its property or assets, (g) such Person making an assignment for the benefit of creditors, or admitting in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due, (h) such Person declaring or effectuating a moratorium in the payment of any of its obligations, or (i) such Person taking any action in furtherance of any of the foregoing.

"Basic Documents" means this Agreement, the Loan Documents, and all documents and certificates contemplated thereby or delivered in connection therewith.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or general Corporation or managing member interests, by contract or otherwise. "Controlling" and "Controlled" shall have correlative meanings. Without limiting the generality of the foregoing, a Person shall be deemed to Control any other Person in which it owns, directly or indirectly, ten percent (10%) or more of the ownership interests.

"Corporation" means MDR Plaza, Inc., a Florida corporation.

"Creditors' Rights Laws" has the meaning set forth in the Loan Agreement.

"Debt" has the meaning set forth in the Loan Agreement.

"Debt Service" has the meaning set forth in the Loan Agreement.

"Effective Date" means the date of this Second Amendment.

"Indebtedness" has the meaning set forth in the Loan Agreement.

“Interests” has the meaning set forth in Article Fourth. (((H16000159126 3)))

“Lender” means SILVERPEAK REAL ESTATE FINANCE LLC, a Delaware limited liability company, or any of its affiliates together with their successors and assigns, the lender under the Loan; or the lender under any replacement Loan.

“Loan” means that certain loan in the amount of \$6,750,000.00 made by Lender to the Partnership in accordance with the terms, conditions and provisions of the Loan Documents.

“Loan Agreement” means that certain Loan Agreement by and between the Partnership and the Lender.

“Loan Documents” has the meaning set forth in the Loan Agreement.

“Obligations” means the indebtedness, liabilities and obligations of the Partnership under or in connection with the Loan Documents.

“Partnership” has the meaning set forth in Article Fourth.

“Person” means any individual, corporation, Corporation, joint venture, limited liability company, limited liability Corporation, association, joint stock Corporation, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

“Permitted Indebtedness” has the meaning set forth in the Loan Agreement.

“Personal Property” has the meaning set forth in the Loan Agreement.

“Property” or “Project” has the meaning set forth in Article Fourth.

“Rating Agency” has the meaning set forth in the Loan Documents, or if no such defined term exists, means a nationally recognized rating agency that is rating or that has rated the Loan or any pool of loans of which the Loan forms a part or any securities issued in connection with a securitization of the Loan or such pool of loans.

“Rating Agency Condition” means (i) with respect to any action taken at any time before the Loan has been sold or assigned to a securitization trust, that the Lender has consented in writing to such action, and (ii) with respect to any action taken at any time after such Loan has been sold or assigned to a securitization trust, that each Rating Agency shall have been given ten days prior written notice thereof and each of the Rating Agencies shall have notified the Corporation in writing that such action will not result in a reduction, withdrawal, downgrade or qualification of the then current rating by such Rating Agency of the Loan or any pool of loans of which the Loan forms a part, or of any securities issued by such securitization trust.

“Shareholder” or “Shareholders” means Michael D. Rubin, a natural person, in his capacity as shareholders of the Corporation, and includes any Person admitted as an additional shareholder of the Corporation or a substitute shareholder of the Corporation pursuant to the provisions of this Agreement, each in its capacity as a shareholder of the Corporation.

“Special Purpose Bankruptcy Remote Entity” means an entity whose organizational documents contain restrictions on its purpose and activities and impose requirements intended to preserve its separateness that are substantially similar to the Special Purpose Provisions of this Agreement and as required by the Loan Agreement, and that is reasonably satisfactory to the Lender.

“Special Purpose Provisions” has the meaning set forth in Section 10.2.2 hereof.

Rules of Construction

Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms. The words "include" and "including" shall be deemed to be followed by the phrase "without limitation." The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. The section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. All section, paragraph, clause, Exhibit or Schedule references not attributed to a particular document shall be references to such parts of this Agreement.

3. A new Article Tenth is added to the Agreement, which shall read as follows
:

10.1 SINGLE PURPOSE/BANKRUPTCY REMOTE PROVISIONS.

This Section 10.1 requires that the Corporation be, and remain, a Special Purpose Bankruptcy Remote Entity so long as any Obligation remains outstanding.

10.2.1 Purpose and Authority. (a) Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management, or operation of the Corporation, the sole purpose to be conducted or promoted by the Corporation has been since its formation and shall continue to be to engage in the activities set forth in Article Fourth.

(b) The Corporation, and the Shareholder, on behalf of the Corporation, may enter into and perform its obligations under the Basic Documents and all documents, agreements, certificates, or financing statements contemplated thereby or related thereto, all without any further act, vote or approval of any Shareholder or other Person notwithstanding any other provision of this Agreement, the Act or applicable law, rule or regulation. The foregoing authorization shall not be deemed a restriction on the powers of the Shareholder to enter into other agreements or behalf of the Corporation.

10.2.2 Amendment of Special Purpose Provisions. Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Corporation, and any provision of law that empowers the Corporation, the Shareholders, or any other Person, for so long as any Obligation is outstanding, neither the Shareholders nor the Corporation shall amend, alter, change or repeal Article Fourth, Article Ninth or Article Tenth of this Agreement in their entirety (collectively, the "Special Purpose Provisions"), or any other provision of this or any other document governing the formation, management or operation of the Corporation in a manner that is inconsistent with any of the Special Purpose Provisions, unless the Lender consents in writing and the Rating Agency Condition is satisfied. Subject to this Section 10.2.2, the Shareholders reserve the right to amend, alter, change or repeal any provisions contained in this Agreement in accordance with this Agreement. In the event of any conflict between any of the Special Purpose Provisions and any other provision of this Agreement or any other document governing the formation, management or operation of the Corporation, the Special Purpose Provisions shall control.

10.2.3 Bankruptcy Actions. Notwithstanding any other provision of this Agreement or in any other document governing the formation, management or operation of the Corporation, and notwithstanding any provision of law that otherwise so empowers the Corporation, so long as the Loan is outstanding, neither the Shareholders nor any other Person shall be authorized or empowered, nor shall they permit the Corporation, without the prior unanimous written consent of the Shareholders to take any Bankruptcy Action with respect to the Corporation.

10.2.4 Separateness Provisions. The Shareholders shall cause the Corporation to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises. Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Corporation, the Shareholders have caused the Corporation to, since the date of the Corporation's formation, and, for so long as any Obligation is outstanding, shall continue to cause the Corporation to and the Corporation shall comply with the following provisions: it

- (i) was and will be organized solely for the purpose set forth in Fourth;
- (ii) has not engaged and will not engage in any business unrelated to the ownership of the Interests;
- (iii) has not had and will not have any assets other than those related to the Interests;
- (iv) has not engaged, sought or consented to and will not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale (except as expressly permitted by the Loan Agreement), transfer of shares or the like, or amendment of this Agreement or its other organizational documents;
- (v) intentionally omitted;
- (vi) has not caused or allowed and will not cause or allow its board of directors to take any action requiring the unanimous affirmative vote of 100% of the members of its board of directors unless all of the directors shall have participated in such vote;
- (vii) intentionally omitted;
- (viii) intentionally omitted;
- (ix) has not, and without the unanimous consent of all of its Shareholders will not, with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest (A) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for such entity or for all or any portion of such entity's properties, (C) make any assignment for the benefit of such entity's creditors or (D) take any action that might cause such entity to become insolvent;
- (x) has remained and intends to remain solvent and has maintained and intends to maintain adequate capital in light of its contemplated business operations;
- (xi) has not failed and will not fail to correct any known misunderstanding regarding its separate identity;
- (xii) has maintained and will maintain its accounts, books and records separate from any other Person and will file its own tax returns;
- (xiii) has maintained and will maintain its books, records, resolutions and agreements as official records;
- (xiv) has not commingled and will not commingle its funds or assets with those of any other Person;

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- (xv) has held and will hold its assets in its own name;
- (xvi) has conducted and will conduct its business in its name;
- (xvii) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person;
- (xviii) has paid and will pay its own liabilities, including the salaries of its own employees, out of its own funds and assets;
- (xix) has observed and will observe all corporate formalities;
- (xx) has maintained and will maintain an arm's-length relationship with its Affiliates;
- (xxi) has not and will not have any indebtedness other than as expressly permitted in the Loan Agreement;
- (xxii) has not and will not assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person except for the Loan;
- (xxiii) has not and will not acquire obligations or securities of its Shareholders;
- (xxiv) has allocated and will allocate fairly and reasonably shared expenses, including shared office space, and uses separate stationery, invoices and checks;
- (xxv) except in connection with the Loan, has not pledged and will not pledge its assets for the benefit of any other Person;
- (xxvi) *has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name and not as a division or part of any other Person;*
- (xxvii) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;
- (xxviii) has not made and will not make loans to any Person;
- (xxix) has not identified and will not identify its Shareholders or any Affiliate of any of them, as a division or part of it;
- (xxx) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its Shareholders or Affiliates except in the ordinary course of its business and on terms which are intrinsically fair and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party;
- (xxxi) has and will have no obligation to indemnify its Shareholders or has such an obligation that is fully subordinated to the Debt and will not constitute a claim against it if cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;
- (xxxii) intentionally omitted; and

(xxxiii) will consider the interests of its creditors in connection with all corporate actions;

10.2.5 Limitation On Indemnification. So long as any Obligation is outstanding, (a) no indemnity payment from funds of the Corporation (as distinct from funds from other sources, such as insurance) of any indemnity under this Agreement shall be payable from amounts allocable to any other Person pursuant to the Loan Documents and (b) any indemnification set forth herein shall be fully subordinate to the Loan and, to the fullest extent permitted by law, shall not constitute a claim against the Corporation in the event that the Corporation's cash flow is insufficient to pay its Obligations. The foregoing provisions of this Section 10.2.5 shall survive any termination of this Agreement.

10.2.6 Dissolution.

(a) Subject to Section 10.2.4 (iv), the Corporation shall be dissolved, and its affairs shall be wound up upon the first to occur of the following: (i) the termination of the legal existence of the Corporation unless the Corporation is continued without dissolution in a manner required under this Section 10.2.6 or permitted by this Agreement or the Act or (ii) the entry of a decree of judicial dissolution under the Act.

(b) Notwithstanding any other provision of this Agreement, the Bankruptcy of a Shareholder shall not cause such Shareholder to cease to be a Shareholder of the Corporation and upon the occurrence of such an event, the Corporation shall continue without dissolution. Except as otherwise required by law, notwithstanding any other provision of this Agreement, the dissolution or death of a Shareholder shall not, by itself, cause the Corporation to be dissolved or its affairs to be wound up and upon the occurrence of such event the Corporation shall continue without dissolution.

(c) Notwithstanding any other provision of this Agreement, each of the Shareholders waives any right it might have to agree in writing to dissolve the Corporation upon the Bankruptcy of a Shareholder or the occurrence of an event that causes a Shareholder to cease to be a shareholder of the Corporation.

(d) In the event of dissolution, the Corporation shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Corporation in an orderly manner), and the assets of the Corporation shall be applied in the manner, and in the order of priority, set forth in the Act.

10.2.7 Waivers. To the fullest extent permitted by law, each of the Shareholders hereby irrevocably waive any right or power that they might have to cause the Corporation or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of the Corporation, to compel any sale of all or any portion of the assets of the Corporation pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of the Corporation. The Shareholders shall not have any interest in any specific assets of the Corporation, and no Shareholder shall not have the status of a creditor with respect to any distribution pursuant to this Agreement. The interest of the Shareholders in the Corporation is personal property.

10.2.8 Lender As Third Party Beneficiary. The Lender and its successors and or assigns are third party beneficiaries of this Agreement and may enforce the Special Purpose Provisions.

SCHEDULE I
Land Description

((H16000159126 3)))

Real property in the City of Kissimmee, County of Osceola, State of Florida,
described as follows:

PARCEL I

LOTS 1 AND 2, SUNRISE CENTER, ACCORDING TO THE PLAT THEREOF AS
RECORDED IN PLAT BOOK 6, PAGE 30, OF THE PUBLIC RECORDS OF
OSCEOLA COUNTY, FLORIDA.

TOGETHER WITH: PARCEL II

FROM A POINT 726.99 FEET SOUTH 00°02'25" EAST FROM THE
SOUTHEAST CORNER OF BUSINESS BLOCK 2 OF DELLWOOD PARK AS
RECORDED IN PLAT BOOK 1, PAGE
320, PUBLIC RECORDS OF OSCEOLA COUNTY, FLORIDA, SAID POINT
BEING 1527.99 FEET SOUTH AND 33.0 FEET WEST OF THE NORTHEAST
CORNER OF THE WEST HALF OF THE SOUTHWEST QUARTER OF
SECTION 15, TOWNSHIP 25 SOUTH, RANGE 29 EAST, OSCEOLA COUNTY,
FLORIDA, RUN THENCE NORTH 89°45'30" WEST PARALLEL TO THE
NORTH LINE OF THE SUNRISE SHOPPING CENTER LANDS, 560.0 FEET TO
THE POINT OF BEGINNING; CONTINUE THENCE NORTH 89°45'30" WEST
30.0 FEET; RUN THENCE SOUTH 00°02'25" EAST 200.0 FEET TO THE NORTH
RIGHT-OF-WAY LINE OF WALNUT STREET; RUN THENCE SOUTH 89°54'55"
EAST, ALONG SAID RIGHT-OF-WAY LINE, 90.0 FEET; RUN THENCE NORTH
00°02'25" WEST 148.79 FEET TO THE SOUTHEAST CORNER OF THE CITY OF
KISSIMMEE LIFT STATION
SITE; RUN THENCE NORTH 89°45'30" WEST 60.0 FEET; RUN THENCE
NORTH 00°02'25" WEST 50.0 FEET TO THE POINT OF BEGINNING.

APN: R152529-219100010010 and R152529-00U000900000