


**FIRST AMENDMENT TO
ARTICLES OF ORGANIZATION OF
HIGH POINT II, LLC
an Alabama limited liability company
(the "Company")**


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Shelby Cnty Judge of Probate, AL
06/02/2009 04:13:03 PM FILED/CERT

Pursuant to the provisions of Section 10-12-11 of the Code of Alabama (1975), as amended, the Company adopts the following First Amendment to Articles of Organization:

1. The name of the Company is High Point II, LLC.
2. The Articles of Organization of the Company were filed with the Office of the Judge of Probate of Shelby County, Alabama, on November 27, 2006.
3. The following First Amendment to the Articles of Organization of the Company was adopted by the Company in the manner prescribed by the Alabama Limited Liability Company Act:

A. **ARTICLE III** of the Articles of Organization is hereby amended by deleting Section 3.1(a) in its entirety and replacing it with the following:

“(a) The Company's business and purpose shall consist solely of the acquisition, ownership, development, construction, leasing, management, operation and maintenance of the real estate project known as High Point Town Center located in Prattville, Alabama (the “Property”) and lawful activities incidental thereto, including without limitation, entering into, assuming and refinancing indebtedness secured by the Property and in connection therewith, entering into any Security Instrument described below, any other loan document related thereto and any modification or amendment thereof.”

B. **ARTICLE III** of the Articles of Organization, Section 3.1(b), is hereby amended by adding the following after the phrase “subject to the provisions of the Company’s Operating Agreement”:

“and the provisions set forth in these Articles of Organization (the “Articles”) (including, without limitation, Article XI below, as same may be”

C. **ARTICLE XI** is hereby added to the Articles of Organization:

**“ARTICLE XI
INDEPENDENT MANAGER; POWERS AND DUTIES”**

11.1 Notwithstanding any other provisions of these Articles , 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, without the consent of all Members and Managers of the Company and the holder of the Security Instrument, to the extent provided below, from and after June 2, 2009 ("Amendment Date"), the Company shall have no authority to take any of the following actions (each a "Material Action"):

(a) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than obligations secured by the Security Instrument, except for leases, or 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 paid when due;

(b) seek the dissolution or winding up, in whole or in part, of the Company, or 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;

(c) 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

(d) amend, modify or alter Articles III, XI, XII, XIII, XIV, XV and XVI of these Articles;

11.2 At all times at which the Members and Managers of the Company shall take, or shall be required to take, any action in such capacity and until such time as all obligations secured by a Security Instrument have been paid in full, the Company shall have at least one Independent Manager. An "Independent Manager" shall be an individual

who is not at the time of initial appointment and has not been at any time during the preceding five (5) years: (a) a shareholder, director or manager (with the exception of serving as an Independent Director or Independent Manager), officer, employee, partner or Member of the Company or any affiliate thereof; (b) a customer, supplier or other person who purchases any goods or services from or derives any revenues from its activities with the Company or any affiliate thereof; (c) a person or other entity controlling or under common control with any such shareholder, director, manager, officer, partner, member, customer, supplier, shareholder, equity holder or other person; (d) an attorney or counsel to the Company or any affiliate therefor (e) a member of the immediate family of any such shareholder, director, officer, employee, partner, member, customer, supplier, shareholder, equity holder or other person. As used herein, the term "affiliate" means any person controlling, under the common control with, or controlled by the person in question, and the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, whether through ownership of voting securities, by contract or otherwise. Notwithstanding the foregoing, retaining an independent director for CT Corporation satisfies the indemnification requirement for the Independent Manager.

11.3 With the consent of the Members of the Company, which consent the Members believe to be in the best interest of the Members and the Company, no Independent Manager shall, with regard to any action to be taken under or in connection with this Article, owe a fiduciary duty or other obligation to any Members (except as may specifically be required by the Act), and every Member shall consent to the foregoing by virtue of such Member's purchase of membership interests in the Company, no further act or deed of any Member being required to evidence such consent. Instead, such Independent Manager's fiduciary duty and other obligations with regard to such action under or in connection with this Article shall be owed to the Company (including its creditors, if any creditors then exist). In addition, no Independent Manager may be removed unless his or her successor has been elected or the Security Instrument is satisfied."

D. **ARTICLE XII** is hereby added to the Articles of Organization:

"ARTICLE XII
TITLE TO COMPANY PROPERTY

12.1 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 interest in the Company shall be personal property for all purposes."

E. **ARTICLE XIII** is hereby added to the Articles of Organization:

**"ARTICLE XIII
SEPARATENESS/OPERATIONS MATTERS**

13.1 Notwithstanding anything contained herein to the contrary, in order to preserve and ensure its separate and distinct limited liability company identity, from and after the Amendment Date, and except as provided or required by the Security Instrument or related loan documents 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 operation of the Property;

(b) 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 Articles of Organization or the Company's Operating Agreement or with any limited liability company formalities;

(c) commingle its assets with the assets of any of its principal(s), affiliates, 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 and payments to the property manager for the Property, in each case to the extent permitted by the Security Instrument or consented to by the holder of the Security Instrument and properly accounted for;

(d) 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;

(e) fail to maintain its records, books of account and bank accounts separate and apart from those of the partners, Members, principals and affiliates of the Company, the affiliates of a partner or Member of the Company and any other person or entity or fail to file its own tax returns and 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;

(f) enter into any contract or agreement with any partner, 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 or any other person or entity who directly or indirectly controls, is controlled by, or is under common control with the Company, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any partner, Member, principal or affiliate of the Company, as the case may be, any guarantor or any partner, member, principal or affiliate thereof unless such contract or agreement has been approved by the holder of the Security Instrument;

(g) fail to correct any known misunderstandings regarding the separate identity of the Company;

(h) without first obtaining the consent of the holder of the Security Instrument, hold itself out to be responsible or 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));

(i) 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 partner, Member, principal or affiliate of the Company or any partner, member, principal or affiliate thereof) unless the Company is in fact responsible for such debts, which responsibility must be approved by the holder of the Security Instrument;

(j) 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.

F. **ARTICLE XIV** is hereby added to the Articles of Organization:

“ARTICLE XIV
EFFECT OF BANKRUPTCY, DEATH OR
INCOMPETENCY OF A MEMBER

14.1 Subject to applicable law and Section 13.1 dissolution of the Company shall not occur so long as the Company remains owner of the Property subject to the Security Instrument. The bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency or insolvency 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, if any, to the admission of such assignee as a substitute Member under Operating Agreement of the Company. 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, incompetent or insolvent Member.

14.2 No Member shall, so long as any obligation to the holder of the Secured Instrument is outstanding, amend, alter, change or repeal the definition of “Independent Manager” or any sections that relate to Independent Managers and/or Special Members of the Company's Operating Agreement without the unanimous written consent of all Independent Managers.

14.3 Notwithstanding any other provision of the Company's Operating Agreement and any provision of law that otherwise so empowers the Company, for so long as any obligation to the holder of the Secured Instrument is outstanding from the Company or a Member or any other person, neither a Member nor any other person shall be authorized or empowered, nor shall they permit the Company, without the prior unanimous written consent of all Members and all Independent Managers, to take any Material Action, provided, however, no Member may vote on, or authorize the taking of, any Material Action, unless there is at least one Independent Manager then serving in such capacity.

14.4 As long as any obligation to the holder of the Security Instrument is outstanding, the Members shall cause the Company at all times to have at least one Independent Manager who will be appointed by the Members. To the fullest extent permitted by law, including Section 10-12-21(k) of the Act, the Independent Manager shall consider only the interests of the Company, including its respective creditors, in acting or

otherwise voting on the matters referred to in the Company's Articles of Organization and Operating Agreement. No resignation or removal of an Independent Manager, and no appointment of a successor Independent Manager, shall be effective until such successor (i) shall have accepted his or her appointment as an Independent Manager by a written instrument, and (ii) shall have executed a counterpart to the Company's Operating Agreement. In the event of a vacancy in the position of Independent Manager, the Members shall, as soon as practicable, appoint a successor Independent Manager. All right, power and authority of the Independent Manager shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in the Company's Articles of Organization and Operating Agreement. Except as provided above, in exercising their rights and performing their duties under the Company's Articles of Organization and Operating Agreement, any Independent Manager shall have a fiduciary duty of loyalty and care as required under the Act. No Independent Manager shall at any time serve as trustee in bankruptcy for any partner, 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 or any other person or entity who directly or indirectly controls, is controlled by, or is under common control with the Company or any person or entity owning a material interest in the Company either directly or indirectly (collectively, under this Article XIV, an "Affiliate"). Notwithstanding the foregoing, the Independent Manager, only in its capacity as Independent Manager, shall only to the extent provided in Section 13.1 participate in the management of the Company and have consent rights with respect, to decisions affecting the Company to the extent that such decisions include or involve a Material Action.

14.5 One or more additional Members of the Company may be admitted to the Company as set forth in the Operating Agreement or with the written consent of the Members; provided, however, that, notwithstanding the foregoing, so long as any obligation to the holder of the Security Instrument remains outstanding, no additional Member may be admitted to the Company unless permitted by the holder of the Security Instrument.

14.6 The Members agree that the Company's Operating Agreement constitutes a legal, valid and binding agreement of the Members, and is enforceable against the Members by the Independent Manager, in accordance with its terms. In addition, the Independent Manager shall be an intended beneficiary of the Company's Operating Agreement."

G. **ARTICLE XV** is hereby added to the Articles of Organization:

**“ARTICLE XV
SUBORDINATION OF INDEMNIFICATION PROVISIONS**

15.1 Notwithstanding any provision hereof to the contrary, any indemnification claim against the Company arising under the 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 after, payment in full of all amounts due and payable under the Security Instrument and the other Loan Documents.”

H. **ARTICLE XVI** is hereby added to the Articles of Organization:

**“ARTICLE XVI
VOTING**


16.1 Notwithstanding anything contained herein to the contrary, when acting on any Material Action subject to the vote of the members and/or the manager, notwithstanding that the Company is not then insolvent, the Independent Manager shall take into account the interest of the Company's creditors, as well as those of the members.”

4. This amendment was approved by the members of the Company as of May 29, 2009.

In Testimony Whereof, the undersigned, being the Members of the Company, do hereby approve this Amendment by execution below to be effective as of the 29th day of May, 2009.

AIG BAKER PRATTVILLE, LLC, a Delaware limited liability company

By: AIG Baker Shopping Center Properties, L.L.C., a Delaware limited liability company, its sole member

By: 
Alex D. Baker
President

HIGH POINT, LLC, an Alabama limited liability company

By: _____
Joel D. McClinton, Sr.
Manager

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By: _____
Alex D. Baker
President

HIGH POINT, LLC, an Alabama limited liability company

By: _____
Joel D. McClinton, Sr.
Manager