

Feb. 14. 2006 1:24 PM PST

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**LLC AMND/RESTATE/CORRECT OR M/MG RESIGN**

**VIA ROYALE REALTY ASSOCIATES, LLC**

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No. 9725 P. 2

ARTICLES OF AMENDMENT  
TO  
ARTICLES OF ORGANIZATION  
OF

VIA ROYALE REALTY ASSOCIATES, LLC

(Present Name)  
(A Florida Limited Liability Company)

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FIRST: The Articles of Organization were filed on January 12, 2006 and assigned document number 1.06000004558.

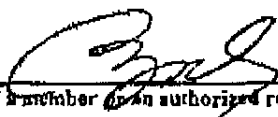
SECOND: This amendment is submitted to amend the following:

To add SPE Provisions to the articles of organization. The attached language is hereby added to the articles of organization as follows:

(See Attached)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated February 14, 2006.



Signature of member or an authorized representative of a member.

Bernard H. Vogel

Typed or printed name of signer

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**ARTICLE V : PURPOSE.**

The Company's business and purpose shall consist solely of the acquisition, ownership, operation, maintenance and management of the real property commonly known as Via Royale, 4575 Via Royale, Ft. Myers, , as legally described in Exhibit A attached hereto (the FL 33919 "Property") and such activities as are necessary, incidental or appropriate in connection therewith.

**ARTICLE VI . RESTRICTIONS/LIMITATIONS ON POWERS AND DUTIES.**

Notwithstanding any other provisions of the Company's Articles of Organization, Operating Agreement or similar organizational documents, or any provision of law that otherwise so empowers the Company, so long as any obligations secured by a first mortgage/deed of trust lien ("First Lien") on the Property ("Security Instrument") remain outstanding and not discharged in full, the Company shall not do any of the following:

- (a) engage in any business or activity other than the acquisition, development, ownership, operation, leasing and managing and maintenance of the Property, and entering into the loan made in connection with any Security Instrument ("Loan") and activities incidental thereto;
- (b) acquire or own any material assets other than (i) the Property, and (ii) such incidental personal property as may be necessary for the operation of the Property;
- (c) 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, without in each case the consent of any holder of a First Lien on the Property ("Lender");
- (d) (i) fail to observe its organizational formalities or 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, and qualification to do business in the State where the Property is located, if applicable, or (ii) without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of the Company's Articles of Organization, Operating Agreement or similar organizational documents, as the case may be;
- (e) own any subsidiary or make any investment in, any person or entity without the consent of Lender;

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- (f) commingle its assets with the assets of any of its members, general partners, affiliates, principals or of any other person or entity, participate in a cash management system with any other entity or person or fail to use its own separate stationery, invoices and checks;
- (g) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Loan, except for trade payables in the ordinary course of its business of owning and operating the Property, provided that such debt (i) is not evidenced by a note, (ii) is paid within sixty (60) days of the date incurred, (iii) does not exceed in the aggregate four percent (4%) of the outstanding principal balance of the note evidencing the indebtedness secured by any Security Instrument ("Note"), and (iv) is payable to trade creditors and in amounts as are normal and reasonable under the circumstances;
- (h) fail to pay its debts and liabilities (including, without limitation, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due;
- (i) (i) fail to maintain its records (including, without limitation, financial statements), books of account and bank accounts separate and apart from those of the members, general partners, principals and affiliates of the Company, the affiliates of a member, general partner or principal of the Company, and any other person or entity, (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;
- (j) enter into any contract or agreement with any member, general partner, principal or affiliate of the Company, any guarantor of the Loan, or any member, general partner, principal or affiliate thereof (other than a business management services agreement with an affiliate of the Company, provided that (i) such agreement is acceptable to Lender, (ii) the manager, or equivalent thereof, under such agreement holds itself out as an agent of the Company, and (iii) the agreement meets the standards set forth in this subsection (j) following this parenthetical), except upon terms and conditions that are commercially reasonable, intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any member, general partner, principal or affiliate of the Company, any guarantor of the Loan, or any member, general partner, principal or affiliate thereof;
- (k) 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;
- (l) guarantee or become obligated for the debts of any other entity or person or hold itself out to be responsible for the debts of another person;

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- (m) make any loans or advances to any third party, including any member, general partner, principal or affiliate of the Company, or any member, general partner, principal or affiliate thereof, and shall not acquire obligations or securities of any member, general partner, principal or affiliate of the Company, or any member, general partner, or affiliate thereof;
- (n) fail to file its own tax returns or, if part of a consolidated group, fail to be shown as a separate member of such group;
- (o) 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, without limitation, any member, general partner, principal or affiliate of the Company, or any member, general partner, principal or affiliate thereof);
- (p) 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;
- (q) share any common logo with or hold itself out as or be considered as a department or division of (i) any general partner, principal, member or affiliate of the Company, (ii) any affiliate of a general partner, principal or member of the Company, or (iii) any other person or entity;
- (r) fail to allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including, without limitation, paying for office space and services performed by any employee of an affiliate;
- (s) pledge its assets for the benefit of any other person or entity, other than with respect to the Loan;
- (t) fail to maintain a sufficient number of employees in light of its contemplated business operations;
- (u) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors without the affirmative vote of all of the members of the Company;
- (v) fail to hold its assets in its own name;
- (w) have any of its obligations (other than the Loan) guaranteed by an affiliate; or
- (x) amend Articles [One, Two, Three, Four, Five, Six, or Seven] of these Articles of Organization [Note: cross reference to actual Articles addressed in this form].

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**ARTICLE VII : 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 VIII 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;

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- (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 IX : 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 X : SUBORDINATION OF INDEMNIFICATION PROVISIONS**

Notwithstanding any provision hereof to the contrary, any indemnification claim against the Company arising under these 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, 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 for any month over all amounts then due under the Security Instrument and the other Loan Documents.

**ARTICLE XI : GOVERNING PROVISIONS.**

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

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Exhibit "A"

Tract or parcel of land in the North half of the Northwest Quarter of Section 2 and the North Half of the Northeast Quarter of Section 3, Township 45 South, Range 24 East, Lee County, Florida which is described as follows:

From the Northeast corner of said Section 3, thence South  $01^{\circ}05'53''$  West, along the East line of said Section for 62.01 feet to the Southerly right-of-way of Colonial Boulevard; thence South  $89^{\circ}00'35''$  West along said right-of-way for 153.38 feet to the point of curvature of a tangent curve to the left, having a radius of 30.00 feet; thence Southwesterly along the arc of said curve for 46.02 feet to the point of tangency; thence South  $01^{\circ}05'43''$  West along the Easterly right-of-way (30.00 feet from centerline) of Via Royale for 631.08 feet to the point of beginning; thence North  $89^{\circ}00'35''$  East for 290.39 feet; thence South  $0^{\circ}39'56''$  East for 197.29 feet; thence South  $89^{\circ}20'04''$  West along the Northerly right-of-way (30.00 feet from centerline) of Royal Palm Square Boulevard for 114.96 feet; thence South  $89^{\circ}07'55''$  West along said right-of-way for 145.34 feet to the Point of Curvature of a tangent curve to the right, having a radius of 30.00 feet; thence Northeasterly along the arc of said curve for 47.23 feet to the point of tangency; thence North  $0^{\circ}39'56''$  West along said Easterly right-of-way of Via royale for 165.52 feet; thence North  $01^{\circ}06'43''$  East for 0.64 feet to the Point of Beginning.

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