

Division of Corporations

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P95000087587

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To: Division of Corporations
 Fax Number : (850)205-0380

From: Account Name : CUMMINGS & LOCKWOOD
 Account Number : 102336001100
 Phone : (239) 649-3186
 Fax Number : (239)263-0703

FILED
07 MAY -4 AM 10:00
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

COR AMND/RESTATE/CORRECT OR O/D RESIGN

BEACHWAY APARTMENTS, INC.

Certificate of Status	0
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COVER LETTER

**TO: Amendment Section
Division of Corporations**

NAME OF CORPORATION: Beachway Apartments, Inc.

DOCUMENT NUMBER: P95000087587

The enclosed *Articles of Amendment* and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

Doreen Bennett
(Name of Contact Person)

Cummings & Lockwood LLC
(Firm/ Company)

3001 Tamiami Trail North, Suite 400
(Address)

Naples, Florida 34103
(City/ State and Zip Code)

For further information concerning this matter, please call:

Doreen Bennett at (239) 649-3129
(Name of Contact Person) (Area Code & Daytime Telephone Number)

Enclosed is a check for the following amount:

- \$35 Filing Fee
- \$43.75 Filing Fee & Certificate of Status
- \$43.75 Filing Fee & Certified Copy (Additional copy is enclosed)
- \$52.50 Filing Fee Certificate of Status Certified Copy (Additional Copy is enclosed)

Mailing Address
Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

Street Address
Amendment Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

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ARTICLES OF AMENDMENT
OF
THE ARTICLES OF INCORPORATION
OF
BEACHWAY APARTMENTS, INC.

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

07 MAY -4 AM 10:00

FILED

BEACHWAY APARTMENTS, INC. (the "Corporation"), a corporation organized and existing under and by virtue of the Florida Business Corporation Act, does hereby certify as follows:

FIRST: The name of the Corporation is BEACHWAY APARTMENTS, INC.

SECOND: In accordance with the Florida Business Corporation Act, the Board of Directors of the Corporation has recommended and all of the Shareholders of the Corporation have approved the following amendment to the Articles of Incorporation of the Corporation, which amendment deletes Article IV in its entirety and substitutes the following in its place and stead:

"Article IV- Capital Stock

The aggregate number of shares of capital stock that the Corporation shall have the authority to issue is Ten Thousand (10,000) shares; of which (i) One Thousand (1,000) shares shall be Class A Voting Common Stock having a par value of One Dollar (\$1.00) (the "Voting Stock") and (ii) Nine Thousand (9,000) shares shall be Class B Non-Voting Common Stock having a par value of One Cent (\$0.01) (the "Non-Voting Stock"). The rights of the Voting Stock and the Non-Voting Stock shall be identical, except that the Non-Voting Stock shall not be entitled to vote other than as required by law."

THIRD: Immediately upon the filing of the Articles of Amendment, each outstanding share of the Corporation's Common Stock (the "Old Shares"), theretofore outstanding, shall, without any action on the part of the holder thereof become One (1) share of Voting Stock and Nine (9) shares of Non-Voting Stock (collectively, the "New Shares"); and each holder of the Old Shares shall thereafter be entitled to receive, upon conversion of all of the Old Shares, a certificate or certificates representing such number of New Shares as shall be

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determined hereto, rounded to the next highest number; provided, however, that the failure of any such holder to so surrender such holder's certificates shall in no way affect the occurrence of the recapitalization.

FOURTH: The foregoing amendment has been duly adopted by the favorable vote of all of the holders of the issued and outstanding stock entitled to vote thereon pursuant to that certain Unanimous Written Consent of the Shareholder dated April 26, 2007, in accordance with Sections 607.1003 and 607.0704 of the Florida Business Corporation Act. Such consent was adopted and approved pursuant to the recommendation of the Board of Directors of the Corporation pursuant to that certain Unanimous Written Consent of the Board of Directors of the Corporation dated April 26, 2007, in accordance with Sections 607.1003 and 607.0821 of the Florida Business Corporation Act.

FIFTH: The number of shares entitled to vote for or against such amendment was One Thousand (1,000) shares of the Corporation.

SIXTH: Pursuant to the aforementioned Unanimous Written Consent of the Shareholders, all One Thousand (1,000) of the shares of the Corporation that were entitled to vote thereon were cast in favor of the amendment contained herein.

SEVENTH: In accordance with the Florida Business Corporation Act, the Board of Directors of the Corporation has recommended and all of the Shareholders of the Corporation have approved the following amendment to the Articles of Incorporation of the Corporation, which amendment adds the following Article XIII:

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"THIRTEENTH: SPE PROVISIONS

Notwithstanding anything contained herein to the contrary:

PURPOSE

The Corporation's business and purpose shall consist solely of the following:

- (i) The acquisition, ownership, operation and management of the real estate project known as **Beachway Apartments located at 1880/90/96 N.E. 123rd Street, North Miami, Florida**, located in **Miami Dade County, Florida**, (the "Property"), pursuant to and in accordance with these Articles of Incorporation; and
- (ii) to engage in such other lawful activities permitted to corporations by the Corporation Laws of the State of Florida as are incidental, necessary or appropriate to the foregoing.

INDEPENDENT DIRECTOR

(a) At all times at which the directors of the Corporation shall take, or shall be required to take, any action in such capacity and until such time as all 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") have been paid in full, there shall be at least one Independent Director. An "Independent Director" 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, officer, attorney, counsel, employee or member of the Corporation or any affiliate of the Corporation; (b) a customer of, or supplier of the Corporation or any of its shareholders, subsidiaries or affiliates; (c) a person or other entity controlling or under common control with any such shareholder, member, customer, supplier or other person; or (d) a member of the immediate family of any such shareholder, director, officer, employee, attorney, counsel, member, customer, supplier or other person; provided, however, an individual shall not be otherwise disqualified from serving as an Independent Director by clause (a) above solely because such Independent Director also serves or will serve the Corporation or any of its affiliates as an Independent Director under their respective charter documents. 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

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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.

(b) With the consent of the initial shareholder of the Corporation, which consent the initial shareholder believes to be in the best interest of the initial shareholder and the Corporation, no Independent Director shall, with regard to any action to be taken under or in connection with this ARTICLE, owe a fiduciary duty or other obligation to the initial shareholder nor to any successor shareholders (except as may specifically be required by the statutory law of any applicable jurisdiction), and every shareholder, including each successor shareholder, shall consent to the foregoing by virtue of such shareholder's purchase of shares of capital stock of the Corporation, no further act or deed of any shareholder being required to evidence such consent. Instead, such directors' fiduciary duty and other obligations with regard to such action under or in connection with this ARTICLE shall be owed to the Corporation (including its creditors). In addition, no Independent Director may be removed unless his or her successor has been elected.

(c) Notwithstanding any other provision of these Articles and any provision of law that otherwise empowers the Corporation and so long as any obligations secured by a Security Instrument remain outstanding and not discharged in full, the Corporation shall not, without the unanimous consent of the Board of Directors, including the Independent Directors, do any of the following:

(i) engage in any business or activity other than those set forth in the Purpose section of this ARTICLE;

(ii) incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) obligations secured by the Security Instrument; (ii) unsecured trade and operational debt incurred in the ordinary course of owning and operating the Property not outstanding for more than sixty (60) days with trade to exceed two percent (2%), in the aggregate, of the Partial Release Amount identified in the Note (as defined in the Security Instrument) in connection with the Property; and (iii) debt incurred in the financing of equipment and other personal property used in the Corporation's course of business or at the Property, but in no event to exceed \$50,000;

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- (iii) seek the dissolution or winding up, in whole or in part, of the Corporation;
- (iv) cause the Corporation 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 Corporation adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Corporation, or file a petition seeking or consenting to reorganization or relief of the Corporation as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Corporation; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Corporation or of all or any substantial part of the properties and assets of the Corporation, or make any general assignment for the benefit of creditors of the Corporation, or admit in writing the inability of the Corporation to pay its debts generally as they become due or declare or effect a moratorium on the Corporation debt or take any action in furtherance of any such action; or
- (vi) amend Article THIRTEENTH of these Articles of Incorporation.

In addition to the foregoing, so long as any obligation secured by the Security Instrument remains outstanding and not discharged in full, the Corporation 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).

SEPARATENESS/OPERATIONS MATTERS

The Corporation 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 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

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prior written consent of the holder of the Security Instrument, amend, modify, terminate or fail to comply with the provisions of these *Articles of Incorporation, or its By-Laws*;

- (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 shareholder, principal, or affiliate of the Corporation, 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 Corporation 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;
- (f) fail to maintain its records, books of account and bank accounts separate and apart from those of the shareholders, *principals and affiliates of the Corporation, the affiliates of the shareholders of the Corporation 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 Corporation;
- (g) enter into any contract or agreement with any shareholder, principal or affiliate of the Corporation or any guarantor of all or a portion of the obligations secured by the Security Instrument or any partner, member, shareholder, principal or affiliate thereof, 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 shareholder, principal or affiliate of the Corporation, as the case may be, any guarantor or any partner, member, shareholder, principal or affiliate thereof;
- (h) fail to correct any known misunderstandings regarding the separate identity of the Corporation;
- (i) 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 Corporation (except

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for a Guarantor or Indemnitor (as defined in the Security Instrument));

(j) make any loans or advances to any third party, including any shareholder, principal or affiliate of the Corporation, or any shareholder, partner, member, principal or affiliate thereof;

(k) fail to file its own tax returns or to use separate contracts, purchase orders, stationary, 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 Corporation is responsible for the debts of any third party (including any shareholder, principal or affiliate of the Corporation or any shareholder, partner, member, principal or affiliate thereof);

(m) fail to allocate fairly and reasonably among the Corporation 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 shareholder, principal, or affiliate of the Corporation, (ii) any affiliate of a shareholder of the Corporation, or (iii) any other person or entity or allow any person or entity to identify the Corporation as a department or division of that person or entity;

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

(r) fail to conduct its business so that the assumptions made with respect to the Corporation in any "substantive non-consolidation" opinion letter delivered in connection with the

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origination of financing secured by a Security Instrument shall be true and correct in all respects.

SUBORDINATION OF INDEMNIFICATION PROVISIONS

Notwithstanding any provision hereof to the contrary, any indemnification claim against the Corporation arising under these Articles, the By-Laws or the laws of the state of organization of the Corporation shall be fully subordinate to any obligations of the Corporation arising under the Security Instrument or any other Loan Document (as defined therein), and shall only constitute a claim against the Corporation to the extent of, and shall be paid by the Corporation in monthly installments only from, the excess of net operating income of the Corporation for any month over all amounts then due under the Security Instrument and the other Loan Documents."

IN WITNESS WHEREOF, the Corporation has caused this Certificate to be signed by its President and attested by its Secretary this 26th day of April, 2007.

BEACHWAY APARTMENTS, INC.

By: 
SHLOMO CHELMINSKY, President

Attest:

By: 
SHLOMO CHELMINSKY, Secretary

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