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Gornitod Gornth, PA

(Requestor's Name)

149 S. Ridgewood Ave

(Address)

Suite 550

(Address)

Daytona Beach, FL 32114

(City/State/Zip/Phone #)

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**AMENDED AND RESTATED  
ARTICLES OF ORGANIZATION  
OF  
OCEAN EDGE HOLDINGS, LLC**

Pursuant to the provisions of Florida Statutes §608.411, Ocean Edge Holdings, LLC adopts the following articles of amendment and restatement to its articles of organization:

FIRST: Amendments and restatements adopted:

**ARTICLES OF ORGANIZATION  
OF  
OCEAN EDGE HOLDINGS, LLC  
A Florida Limited Liability Company**

**ARTICLE ONE: NAME**

The name of this limited liability company is Ocean Edge Holdings, LLC.

**ARTICLE TWO: PERIOD OF DURATION**

The period of duration of this limited liability company is perpetual. The date and time at which the existence of this limited liability company begins is the date and time of filing of these articles of organization by the Department of State of the State of Florida.

**ARTICLE THREE: PURPOSE**

The business and purpose of Ocean Edge Holdings, LLC, a Florida limited liability company (the "Company") shall consist solely of the following:

(a) to acquire a membership interest in and act as the managing member of Perry's Ocean Edge Resort, LLC, a Florida limited liability company (the "LLC"), which is engaged solely in the ownership, operation and management of the real estate project known as Perry's Ocean Edge Resort, located in Daytona Beach Shores, Volusia County, Florida (the "Property"), pursuant to and in accordance with these Articles of Organization and the LLC's Articles of Organization; and

(b) to engage in such other lawful activities permitted to limited liability companies by the laws of the State of Florida as are incidental, necessary or appropriate to the foregoing.

**ARTICLE FOUR: PRINCIPAL OFFICE**

The mailing address and street address of the principal office this limited liability company are as follows:

315 N. Atlantic Avenue  
Daytona Beach, Florida 32118

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## **ARTICLE FIVE: REGISTERED AGENT; REGISTERED OFFICE**

The name and street address of the initial registered agent of this limited liability company in the State of Florida are as follows:

Name:	L. A. Gornito, Jr., Esq.
Street Address:	149 S. Ridgewood Avenue, Suite 550 Daytona Beach, Florida 32114

## **ARTICLE SIX: MANAGEMENT**

The limited liability company is to be managed by one or more Managers and is therefore a manager managed company. The name and address of the initial Manager are as follows:

<u>Name</u>	<u>Address</u>
George D. Anderson	315 N. Atlantic Avenue Daytona Beach, FL 32118

## **ARTICLE SEVEN: POWERS AND DUTIES**

(a) Notwithstanding any other provision of these Articles, any contrary or inconsistent provision in the operating agreement of the Company or any other document or instrument governing the affairs of the Company, or any provision of law that otherwise so empowers the Company, so long as the loan in the initial principal amount of \$13,000,000 (the "Loan") and any other obligations secured by that certain Loan Agreement and Mortgage in favor of Citigroup Global Markets Realty Corp, as lender (the "Mortgage") remain outstanding and not discharged in full, without the prior written consent of the holder of the Mortgage (the "Lender"), the Company and the LLC shall have no authority to:

- (i) conduct its affairs in any manner contravening or inconsistent with the provisions of Article Three, Seven, Eight and Nine of these Articles;
- (ii) dissolve or liquidate the Company or LLC or consent to any such dissolution or liquidation;
- (iii) sell or lease, or otherwise dispose of all or substantially all of the assets of the Company or the LLC;
- (iv) withdraw as the managing member of the LLC; or
- (v) amend, modify or alter Articles Three, Seven, Eight and Nine of these Articles.

(b) Notwithstanding any other provision of these Articles, any contrary or inconsistent provision in the operating agreement of the Company or any other document or instrument governing the affairs of the Company, or any provision of law that otherwise so empowers the Company, so long as the Loan or any other obligations secured by the Mortgage remains outstanding and not discharged in full, the Managing Member and the Company shall have no authority, unless such action has been approved by the unanimous vote of all other members of the

LLC, to file or consent to the filing of any voluntary or involuntary bankruptcy or insolvency petition with respect to the Company or the LLC or otherwise initiate or consent to proceedings to have the Company or the LLC adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company or the LLC, or file a petition seeking or consenting to reorganization or relief of the Company or the LLC as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Company or the LLC; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Company or the LLC or of all or any substantial part of the properties and assets of the Company or the LLC, or make any general assignment for the benefit of creditors of the Company or the LLC, or admit in writing the inability of the Company or the LLC to pay its debts generally as they become due or declare or effect a moratorium on the Company's or the LLC's debt or take any corporate action in furtherance of any such action.

#### **ARTICLE EIGHT: SEPARATENESS/OPERATIONS MATTERS**

The Company has heretofore conducted and shall at all times hereafter conduct its business and operations in strict accordance and compliance with the following provisions:

- (a) the Company has not and shall not own any asset or property other than (i) its interest in the LLC, and (ii) incidental personal property necessary for the ownership or operation of its interest in the LLC;
- (b) the Company has not and shall not engage in any business or activity other than those set forth in Article Three and has not and shall not cause or permit the LLC to engage in any business or activity other than the ownership, management and operation of the Property; the Company has conducted and operated and will conduct and operate its business as presently conducted and operated;
- (c) the Company has not and shall not enter into or be a party to, or cause or permit the LLC to enter into or be a party to, any transaction, contract or agreement with any guarantor of the debt secured by the Mortgage or any part thereof (a "Guarantor") or with any Affiliate, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with unrelated third parties;
- (d) the Company has not and shall not, and has not and shall not cause or permit the LLC to incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than, in the case of the LLC, (i) the debt secured by the Mortgage and (ii) trade and operational debt incurred by the LLC in the ordinary course of business with trade creditors in connection with owning, operating and maintaining the Property, in such amounts as are normal and reasonable under the circumstances, provided such debt is not evidenced by a promissory note or other security instrument and is not at any time in an aggregate amount in excess of the lesser of two percent of the original Loan amount or \$13,000,000, and further provided that all such trade debts are paid within 30 days after the same are incurred. No indebtedness other than the debt secured by the Mortgage may be secured (senior, subordinated or pari passu) by the Property;

- (e) the Company has not and shall not, and has not and shall not permit the LLC to make any loans or advances to any Guarantor, Affiliate or other person or entity;
- (f) the Company has remained and shall remain solvent and shall pay its debts from its assets as the same shall become due;
- (g) the Company has done and shall do all things necessary to preserve its and the LLC's existence, and the Company has not and shall not, nor shall the Company cause or permit the LLC to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents of the Company, LLC or a Guarantor in a manner which would adversely affect the Company's or the LLC's existence as a single-purpose entity, without the prior written consent of Lender;
- (h) the Company has maintained and shall maintain its and, separately, the LLC's financial statements, accounting records, books and records, bank accounts and other entity documents separate from those of their respective Affiliates, any constituent party of the LLC or any other person or entity, and the Company has filed and will file its own tax returns, and cause the LLC to file its own tax returns. The Company has maintained and shall maintain its and, separately, the LLC's books, records, resolutions and agreements as official records;
- (i) the Company has been and shall be, and at all times has held and will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate, any constituent party of the LLC or any Guarantor), shall correct any known misunderstanding regarding its identity or status as a separate entity, has conducted and shall conduct business in its own name, has held and shall hold its assets in its own name, has maintained and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks, has allocated and shall allocate fairly and reasonably any overhead for shared office space and has not and shall not identify itself as a division or part of any Affiliate or other person or entity, or any Affiliate or other person or entity as a division or part of the Company;
- (j) the Company has preserved and kept and shall preserve and keep in full force and effect its existence, good standing and qualification to do business in the state in which the Property is located and the Company has observed and will observe all corporate formalities;
- (k) the Company has maintained and shall maintain adequate capital and a sufficient number of employees for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations. The Company has paid and will pay the salaries of its own employees;
- (l) the Company has not and shall not seek or consent to the dissolution or winding up, in whole or in part, of the Company or the LLC, nor shall the Company merge with or be consolidated into any other entity or cause or permit the LLC to be merged with or consolidated into any other entity, or acquire, or cause or permit the LLC to acquire, by purchase or otherwise, all or substantially all of the business assets of, or any stock or beneficial ownership of, any entity;

- (m) the Company has not and shall not commingle the funds or any other assets of the Company with those of any Affiliate, any Guarantor, any constituent party of the LLC or any other person or entity, and the Company has paid and shall pay its own liabilities out of its own funds and assets;
- (n) the Company has maintained and shall maintain its and, separately, the LLC's assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its or the LLC's individual assets from those of any constituent party of the LLC, Affiliate, Guarantor or any other person or entity;
- (o) the Company has not and shall not, and has not and shall not permit the LLC to assume, guarantee, become obligated for or hold itself out to be responsible for, or hold out its credit as being available to satisfy, or pledge its assets as security for, the debts or obligations of any other person or entity (provided, that the foregoing shall not prevent the LLC from being and holding itself responsible for expenses incurred or obligations undertaken by the property manager of the Property in respect of its duties regarding the Property);
- (q) the Company shall not own any subsidiary, or make any investment in any person or entity;
- (r) the Company shall not pledge its assets for the benefit of any other person or entity;
- (s) the members of the Company shall consider the interests of the creditors of the Company and the LLC in connection with all corporate decisions and actions;
- (t) the Company shall not acquire obligations or securities of any Guarantor or Affiliate; and

**ARTICLE NINE: EFFECT OF BANKRUPTCY, DEATH OR  
INCOMPETENCY OF A MEMBER; TERMINATION EVENT**

The following provisions shall govern over any contrary or inconsistent provision in the operating agreement of the Company or any other document or instrument governing the affairs of the Company:

(a) 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 in the Company 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.

(b) If, notwithstanding the provisions of the foregoing subsection (a), a termination event occurs with respect to the Company, the vote of a majority-in-interest of the remaining members of the Company shall be sufficient to continue the life of the Company, and if the vote of a majority-in-interest of the remaining members is not obtained to continue the life of the Company

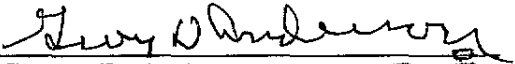
upon a termination event, the Company shall nevertheless not dissolve or liquidate its assets without the consent of the Lender.

SECOND: The date of filing of the original Articles of Organization of Ocean Edge Holdings, LLC was February 10, 2005.

THIRD: The effective date of these Amended and Restated Articles of Organization shall be the date and time of the filing with the Department of State of the State of Florida.

FOURTH: These Amended and Restated Articles of Organization of Ocean Edge Holdings, LLC supersede the original articles of organization and all amendments thereto.

The undersigned Manager of this limited liability company execute these Amended and Restated Articles of Organization this \_\_\_\_ day of August, 2005.

  
George D. Anderson

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05 AUG 24 AM 9:45  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing Amended and Restated Articles of Organization was acknowledged before me this \_\_\_\_ day of August, 2005, by George D. Anderson, as the Manager of Perry's Ocean Edge Resort, LLC, on behalf of the limited liability company, who is personally known to me and who did not take an oath.

\_\_\_\_\_  
Notary Public  
State of Florida at Large  
My Commission Expires: