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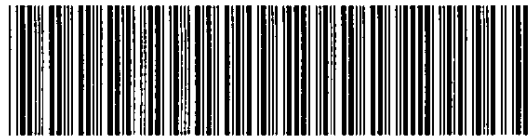
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EXAMINER

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CONTACT: Kim Weidenbach

DATE: 09/02/10

REF. #: 000150.131277

CORP. NAME: FONTAINBLEAU WEST MIDRISE 23, LLC

- | | | |
|--|---|--|
| ☐ ARTICLES OF INCORPORATION | ☒ ARTICLES OF AMENDMENT | ☐ ARTICLES OF DISSOLUTION |
| ☐ ANNUAL REPORT | ☐ TRADEMARK/SERVICE MARK | ☐ FICTITIOUS NAME |
| ☐ FOREIGN QUALIFICATION | ☐ LIMITED PARTNERSHIP | ☐ LIMITED LIABILITY |
| ☐ REINSTATEMENT | ☐ MERGER | ☐ WITHDRAWAL |
| ☐ CERTIFICATE OF CANCELLATION | | |
| ☐ OTHER: | | |

STATE FEES PREPAID WITH CHECK# 536457 FOR \$ 55.00

AUTHORIZATION FOR ACCOUNT IF TO BE DEBITED:

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| ☐ CERTIFICATE OF STATUS | | |

Examiner's Initials

AMENDED AND RESTATED
ARTICLES OF ORGANIZATION
OF

FONTAINBLEAU WEST MIDRISE 23, LLC

These Amended and Restated Articles of Organization for FONTAINBLEAU WEST MIDRISE 23, LLC are being filed pursuant to Section 608.411 of the Florida Limited Liability Company Act ("Act"), and hereby amend and restate, in their entirety, the Articles of Organization filed with the Florida Secretary of State on September 8, 2005, under Document Number L05000088645, and any and all amendments thereto.

ARTICLE I - Name

The name of the Limited Liability Company is FONTAINBLEAU WEST MIDRISE 23, LLC (the "Company").

ARTICLE II - Address

The street address and mailing address of the principal office of the Company is 3470 N.W. 82nd Avenue, Suite 988, Doral, FL 33122

ARTICLE III - Registered Agent and Office

The street address of the Company's registered agent and office is 3470 N.W. 82nd Avenue, Suite 988, Doral, FL 33122, and the name of its registered agent at such office is MASOUD SHOJAEE.

ARTICLE IV - Management

The Company is a manager-managed limited liability company for purposes of the Act. The Company's managers shall be appointed in accordance with the Company's operating agreement, as may be amended ("Operating Agreement"). The current managers of the Company are PEDRO A. MARTIN and MASOUD SHOJAEE.

ARTICLE V - Special Purpose Entity Provisions

1. **Duration of SPE Provisions.** For so long as the Company has any obligation under the mortgage loan facility described in that certain Amended and Restated Master Loan Agreement, among the Company, Affiliates of the Company and Flagler Loan Investments, LLC, a Florida limited liability company (or its Affiliates) or its or their successors or assigns (the "Loan"), the terms and conditions set forth in this Article V shall apply notwithstanding any contrary provisions set forth in the Operating Agreement, or contained in any other document which purports to be an operating agreement of the Company.

2. **Limited Purpose.** The sole and exclusive business and the purposes and powers of the Company shall be to acquire, hold, develop, subdivide, construct improvements upon,

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market, sell, assign, transfer, operate, lease, manage, mortgage, pledge and otherwise deal with a portion of the real property described in Exhibit A to these Amended and Restated Articles of Organization of the Company ("Property"), and to exercise all powers enumerated in the Act incidental, necessary or appropriate to the conduct, promotion or attainment of such business and purposes, including entering into and performing its obligations under the Loan and First Mortgage (as such terms are defined in this Article V), and any activities directly related thereto that may be lawfully performed by a Florida limited liability company. The Company shall have all powers enumerated in the Act necessary or convenient to the conduct, promotion or attainment of such purposes.

3. **Certain Prohibited Activities.** The Company shall only incur indebtedness in an amount necessary to operate and maintain and construct and develop the Property. For so long as any mortgage lien under the Loan (the "First Mortgage") exists on any portion of the Property, the Company shall not (i) incur, assume, or guaranty any other indebtedness other than in an amount necessary to operate and maintain the Property, (ii) dissolve or liquidate, or (iii) consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (A) the entity (if other than the Company) formed or surviving such consolidation or merger or that acquires by conveyance or transfer the properties and assets of the Company substantially as an entirety (1) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (2) shall be acceptable to the mortgagee holding the First Mortgage, in its sole discretion, and (3) shall expressly assume the due and punctual performance of the Company's obligations; and (B) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this Company and be continuing.

While a First Mortgage exists on any portion of the Property, neither the Member nor the Managers shall permit or consent to any transfer of any direct or indirect ownership interest in the Company such that the transferee would own, in the aggregate with the ownership interests of its affiliates and family members in the Company, more than a 49% interest in the Company, unless such transfer is conditioned upon the delivery of an acceptable non-consolidation opinion to the holder of the First Mortgage and to any applicable rating agency concerning, as applicable, the Company, the new transferee and/or their respective owners.

4. **Indemnification.** Any indemnification of the Company's members and/or managers shall be fully subordinated to any obligations respecting the Property (including, without limitation, the First Mortgage) and such indemnification shall not constitute a claim against the Company in the event that cash flow necessary to pay holders of such obligations is insufficient to pay such obligations.

5. **Separateness Covenants.** For so long as the First Mortgage exists on any portion of the Property, in order to preserve and ensure its separate and distinct corporate identity, in addition to the other provisions set forth in the Operating Agreement, the Company shall conduct its affairs in accordance with the following provisions:

(i) It shall establish and maintain an office through which its business shall be conducted separate and apart from those of any affiliate(s) or, if it shares office space

with any affiliate(s), it shall allocate fairly and reasonably any overhead and expense for shared office space.

(ii) It shall not own and will not own any asset or property other than (i) the Property and (ii) incidental personal property necessary for the ownership or operation of the Property.

(iii) It will not engage, directly or indirectly, in any business other than the ownership, management and operation of the Property and it will conduct and operate its business as presently conducted and operated. It shall conduct its business and hold its assets in its own name.

(iv) It will not enter into any contract or agreement with any affiliate of the Company, any constituent party of the Company or any affiliate of any constituent party of 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 such party (or where the benefit flows to the Company).

(v) It has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the indebtedness secured by the First Mortgage and (ii) trade payables or accrued expenses incurred in the ordinary course of the business of operating the Property with trade creditors and in amounts as are normal and reasonable under the circumstances. No indebtedness other than the indebtedness secured by the First Mortgage may be secured (subordinate or pari passu) by the Property.

(vi) It has not made and will not make any loans or advances to any third party, including any affiliate of the Company or constituent party of the Company and shall not acquire obligations or securities of its affiliate(s).

(vii) It is and will remain solvent and will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

(viii) It has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence;

(ix) It will maintain all of its books, records, financial statements and bank accounts separate from those of its affiliate(s) and any constituent party. It shall maintain its books, records, resolutions and agreements as official records.

(x) It will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate or any constituent party of the Company), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct and operate its business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks.

(xi) It will 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.

(xii) Neither the Company nor any constituent party will seek or permit the dissolution, winding up, liquidation, consolidation or merger in whole or in part, of the Company, or acquire by purchase or otherwise all or substantially all the business or assets of, or any stock or other evidence of beneficial ownership of any other person or entity.

(xiii) It will not commingle the funds and other assets of the Company with those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person.

(xiv) It has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual asset or assets, as the case may be, from those of any affiliate or constituent party, or any affiliate of any constituent party, or any other person.

(xv) It shall not pledge its assets and does not and will not hold itself out to be responsible for the debts or obligations of any other person or entity.

(xvi) It shall pay any liabilities out of its own funds, including salaries of any employees.

(xvii) The Company shall maintain a sufficient number of employees in light of its contemplated business operations.

(xviii) The Company shall not guarantee or become obligated for the debts of any other entity or person.

(xix) It shall not have any of its obligations guaranteed by any members, except the guarantor of the First Mortgage.

(xx) It shall have at least one (1) Independent Manager at any time a Material Action is to be considered or approved with respect to the Company or the Property.

6. **Amendments.** The members and/or managers of the Company shall not, so long as the First Mortgage exists on any portion of the Property, amend, alter, change or repeal any provision of this Article V or adopt any provision in conflict therewith without the written consent of the holder of the Loan and First Mortgage.

7. **Material Actions.** Notwithstanding anything contained herein to the contrary and any provision of law that otherwise so empowers the Company, the members, the managers, any officer or any other Person, for so long as the First Mortgage exists on any portion of the Property, neither the members nor the managers nor any officer of the Company, nor any other Person, shall be authorized or empowered, nor shall they permit the Company, without the prior unanimous written consent of the members and the managers of the Company, and the

Independent Manager, to take any Material Action, provided, however, that neither the members nor the managers of the Company, may vote on, or authorize the taking of, any Material Action unless there is at least one (1) Independent Manager then serving in such capacity.

8. Independent Manager. For so long as the First Mortgage exists on any portion of the Property, prior to any Material Action being taken by or with respect to the Company, the Property or other assets, or its business, its members and managers shall cause the Company to have at least one (1) Independent Manager who shall be appointed by the members. The Independent Manager shall be, and is hereby designated as a "manager" within the meaning of the Act, and shall have only those powers in management of the business and affairs of the Company as shall be specifically provided in this Operating Agreement. To the fullest extent permitted by law, 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 Section 7 of this Article V. All right, power and authority of the Independent Manager shall be limited to the extent necessary to exercise those rights and perform those duties of the Independent Manager specifically set forth in this Operating Agreement. Except as provided in the third sentence of this Section 8, in exercising their rights and performing their duties under this Operating Agreement, any Independent Manager shall have a fiduciary duty of loyalty and care similar to that of a director of a business corporation organized under the laws of the state in which the Company is organized. No Independent Manager shall at any time serve as trustee in bankruptcy for any Affiliate of the Company.

For purpose of this Article V, the following terms shall have the following meanings:

"Affiliate" of any Person (as hereinafter defined) shall mean any other Person which, directly or indirectly, controls or is controlled by, or is under common control with such Person. For the purposes of this definition, "controls" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Independent Manager" shall mean a Person who is not at the time of initial appointment, or at any time while serving as a director or manager, as applicable, and has not been at any time during the preceding five (5) years: (a) a stockholder, director (with the exception of serving as the Independent Manager), officer, employee, partner, member, manager, contractor or attorney of the Company or any Affiliate of any of them; (b) a customer, creditor or other person who derives any of its purchases or revenues from its activities with the Company or any Affiliate; (c) a Person controlling or under common control with any such stockholder, director, officer, partner, member, manager, contractor, customer, creditor, supplier or other Person; or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, manager, contractor, customer, creditor or other Person. As used in this definition, 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, whether through ownership of voting securities, by contract or otherwise.

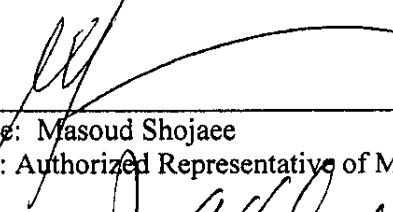
"Material Action" means to file any insolvency, or reorganization case or proceeding, to institute proceedings to have the Company be adjudicated bankrupt or insolvent, to institute proceedings under any applicable insolvency law, to seek any relief under any law relating to relief from debts or the protection of debtors, to consent to the filing or institution of bankruptcy or insolvency proceedings against the Company, to file a petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy or insolvency, to seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official of or for the Company or a substantial part of its property, to make any assignment for the benefit of creditors of the Company, to admit in writing the Company's inability to pay its debts generally as they become due, or to take action in furtherance of any of the foregoing.

"Person" or "Persons" shall mean any one or more individuals, partnerships, corporations (including a business trust), joint stock companies, limited liability company, trusts, unincorporated associations, joint ventures or other entities, or a foreign state or political subdivision thereof or any agency of such state or subdivision.

In accordance with Section 608.408(3), Florida Statutes, the execution of this document constitutes an affirmation under the penalties of perjury that the facts stated herein are true.

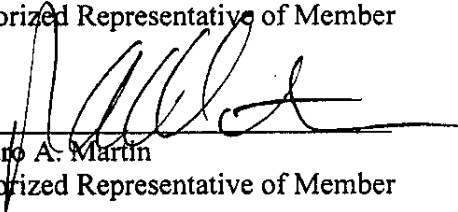
Dated this 31 day of August, 2010.

**FONTAINBLEAU WEST MIDRISE 23,
LLC, a Florida limited liability company**

By: 

Name: Masoud Shojaee

Title: Authorized Representative of Member

By: 

Name: Pedro A. Martin

Title: Authorized Representative of Member

Exhibit A ("Real Estate Description") attached

EXHIBIT A

Fontainebleau East:

Tracts 1, 2, 3, 4 and 7, Fontainebleau Park Subdivision Section One, according to the plat thereof as recorded in Plat Book 90, Page 56, of the Public Records of Miami-Dade County, Florida;

Together with:

A portion of the Northwest 1/4 of Section 4, Township 54 South, Range 40 East, Miami-Dade County, Florida, being more particularly described as follows:

Commence at the Northwest corner of said Section 4, Township 54 South, Range 40 East; thence run North 89°58'50" East, along the North line of said Section 4 (also being the South line of Government Lot 4) for a distance of 95.06 feet to the Point of Beginning of parcel of land hereinafter to be described; thence continue North 89°58'50" East along last described course for a distance of 36.55 feet to a point of intersection with the West line of Tract "F" "Blue Fontaine Tract", according to the plat thereof as recorded in Plat Book 140, Page 76, of the Public Records of Miami-Dade County, Florida; thence run South 08°57'20" West, along the West line of Tract "F" for a distance of 7.93 feet to a point; thence run South 02°06'50" East, along said West line of Tract "F" for a distance of 58.88 feet to the Southwest corner of said Tract "F" (said point also being a point of intersection with the North right-of-way line of Fontainebleau Boulevard as shown on plat of "Fontainebleau Boulevard Park and Park Boulevard", according to the plat thereof as recorded in Plat Book 90, Page 28, of the Public Records of Miami-Dade County, Florida; thence run South 89°42'20" West, along last described course for a distance of 35.02 feet to a point of intersection with the East right-of-way line for canal as shown on plat of "Blue Fontaine Replat", according to the Plat thereof as Plat Book 140, Page 2, of the Public Records of Miami-Dade County, Florida; thence run North 02°06'50" West, along the East right-of-way line of said canal for a distance of 66.89 feet to a point of intersection with the North line of said Section 4 (said point also being the Point of Beginning). Said parcel of land lying and being situated in Miami-Dade County, Florida.

Together with:

A portion of Government Lot 4 between Township 53 and 54 South, Range 40 East, as follows:

Commencing at the Southeast corner of Government Lot 4; thence South 89°58'36" West, 1490.13 feet to the Point of Beginning; thence North 01°53'09" East, 1035.40 feet; thence North 87°00'00" West, 160.03 feet; thence South 01°53'09" West, 1043.86 feet; thence South 89°58'20" East, 160.09 feet to the Point of Beginning.

All being now known as all of "Fontainebleau East" according to the plat thereof as recorded in Plat Book 168, Page 26, of the Public Records of Miami-Dade County, Florida

Fontainebleau West:

Tracts F & G, being all of "Fontainebleau Park West Section Three" according to the plat thereof as recorded in Plat Book 103, Page 96, of the Public Records of Miami-Dade County, Florida, now known as plat of Fontainebleau West, according to the plat thereof as recorded in Plat Book 166, Page 45, of the Public Records of Miami-Dade County, Florida; and Tract S, of Fontainebleau West, according to the plat thereof as recorded in Plat Book 166, Page 45, of the Public Records of Miami-Dade County, Florida, portions of which are now being known as Fontainebleau Lakes Courtyards West, a Condominium, according to the Declaration of Condominium recorded April 11, 2008, in Official Record Book 26321, Page 3108, and all subsequent amendments thereto, in the Public Records of Miami-Dade County, Florida;

Less and Except Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9, Block 1; Lots 1, 4, 6, 7, 8, 9, 10, 11, and 12, Block 2; Lots 1, 3, 4, 5, 6, 7, and 9 Block 3; Lots 1, 2, 4, 5, and 6, Block 20; and less Tracts A, B, C, D, F, H, J, L, M, N, P, Q and R of "Fontainebleau West", according to the plat thereof as recorded in Plat Book 166, Page 45, of the Public Records of Miami-Dade County, Florida.

And Less and Except Units 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, and 217, Building 29; and Units 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236 and 237, Building 30, of Fontainebleau Lakes Courtyards West, a Condominium, according to the Declaration of Condominium recorded April 11, 2008, in Official Record Book 26321, Page 3108, and all subsequent amendments thereto, in the Public Records of Miami-Dade County, Florida.