

L05000092575

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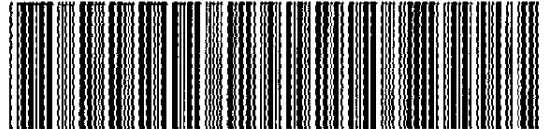
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**COVER LETTER**

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**TO:** Registration Section  
Division of Corporations

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**SUBJECT:** Bay Harbor Homes of Fort Myers, LLC  
(Name of Limited Liability Company)

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

The enclosed Articles of Amendment and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to the following:

Sam E. Thomas  
(Name of Person)

Sam E. Thomas & Associates  
(Firm/Company)

3715 Northside Parkway NW, 400 Northcreek, Suite 650  
(Address)

Atlanta, Georgia 30327  
(City/State and Zip Code)

For further information concerning this matter, please call:

Sam E. Thomas or Nanette at ( 404 ) 350-8337  
(Name of Person) (Area Code & Daytime Telephone Number)

Enclosed is a check for the following amount:

☐ \$25.00 Filing Fee

☐ \$30.00 Filing Fee &  
Certificate of Status

☐ \$55.00 Filing Fee &  
Certified Copy  
(additional copy is enclosed)

☒ \$60.00 Filing Fee,  
Certificate of Status &  
Certified Copy  
(additional copy is enclosed)

**MAILING ADDRESS:**  
Registration Section  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

**STREET/COURIER ADDRESS:**  
Registration Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

**SECOND AMENDED AND RESTATED  
ARTICLES OF ORGANIZATION  
OF  
BAY HARBOR HOMES, LLC**

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Pursuant to Section 608.411, Florida Statutes, the Articles of Organization of Bay Harbor Homes, LLC (the "Company"), a Florida limited liability company formed on September 20, 2005, and assigned document number L05000092575, and amended and restated on November 9<sup>th</sup>, 2005 and assigned Letter Number 205A00067924, are hereby further amended and restated as follows:

**ARTICLE I  
NAME**

The name of the limited liability company is BAY HARBOR HOMES OF FORT MYERS, LLC (the "Company").

**ARTICLE II  
ADDRESS**

The mailing address and street address of the principal office of the Company is 3340 Peachtree Road NE, Suite 2270, Atlanta, Georgia 30326.

**ARTICLE III  
MANAGEMENT**

The Company will be Member-managed. The Member-manager of the Company is:

JD Fla. Holdings, Inc.  
3340 Peachtree Road NE  
Suite 2270  
Atlanta, Georgia 30326

**ARTICLE IV  
REGISTERED OFFICE AND AGENT**

The name and street address of the Company's registered agent is CT Corporation System, 1200 South Pine Island Road, Plantation, Florida 33324.

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**ARTICLE V  
PURPOSE**

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The purpose for which this Company is organized is limited solely to being the managing member of Bay Harbor Homes, LLC, a Delaware limited liability company ("Bay Harbor") and acting as, and exercising all of the authority of, the managing member of Bay Harbor, in connection with Bay Harbor's ownership of that certain real property located at 9601 Bay Harbor Circle, Fort Myers, Florida 33919, and known as Bay Harbor (hereinafter the "Property"), and the transacting of any and all lawful business for which a limited liability company may be organized under Florida law that is incident, necessary and appropriate to accomplish the foregoing.

**ARTICLE VI  
SEPARATENESS COVENANTS**

Notwithstanding any other provisions of these amended and restated Articles and so long as any obligations secured by a first priority mortgage or deed of trust incurred in connection with any financing of the Property (a "Security Instrument") remain outstanding and not discharged in full;

- a. The Company is prohibited from incurring indebtedness.
- b. The Company is prohibited from engaging in any dissolution, liquidation, consolidation, merger or sale of assets and from causing Bay Harbor to do any of the foregoing, both for as long as that certain loan in the original principal sum of \$23,000,000.00 (the "Loan"), currently held by Wells Fargo Bank, N.A., as Trustee for the Registered Holders of Citigroup. Commercial Mortgage Trust 2004-C2, Commercial Mortgage Pass-Through Certificates, Series 2004-C2 (the "Trust", together with its successors and/or assigns, "Lender") is outstanding.
- c. To the extent required by the documents evidencing and/or securing the Loan ("Loan Documents"), no transfer of any direct or indirect ownership interest in the Company may be made unless such transfer is consented to by Lender. Lender may condition its consent upon satisfaction of any requirements in the Loan Documents and/or Lender's then current servicing standards.
- d. The Company is required to continue serving in the capacity as the special purpose member of Bay Harbor so long as the Loan is outstanding.
- e. The Company is required on its own behalf, and covenants to cause Bay Harbor to:
  - i. Maintain books and records separate from any other person or entity;
  - ii. Maintain its bank accounts separate from any other person or entity;

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- iii. Not commingle its assets with those of any other person or entity and hold all of its assets in its own name;
  - iv. Conduct its own business in its own name;
  - v. Maintain separate financial statements, showing its assets and liabilities separate and apart from those of any other person or entity;
  - vi. Pay its own liabilities and expenses only out of its own funds;
  - vii. Observe all limited liability company and other organizational formalities;
  - viii. Maintain an arm's length relationship with its affiliates and enter into transactions with affiliates only on a commercially reasonable basis;
  - ix. Pay the salaries of its own employees from its own funds;
  - x. Maintain a sufficient number of employees in light of its contemplated business operation;
  - xi. Not guarantee, become obligated for or pledge its assets for the debts or benefit of any other person or entity;
  - xii. Not hold out its credit as being available to satisfy the obligations of any other person or entity;
  - xiii. Not acquire the obligations or securities of its affiliates or owners, including shareholders;
  - xiv. Not make loans to any other person or entity or to buy or hold evidence of indebtedness issued by any other person or entity (except for cash and investment-grade securities);
  - xv. Allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate;
  - xvi. Use separate stationary, invoices, and checks bearing its own name;
  - xvii. Hold itself out as a separate identity;
  - xviii. Correct any known misunderstandings regarding its separate identity;
  - xix. Not identify itself as a division of any other person or entity;

xx. Maintain adequate capital in light of its contemplated business operations;  
and

xxi. Comply with each of the single purpose entity/separateness covenants set forth in the Loan Documents.

f. Notwithstanding anything contained in this or any other organizational document to the contrary, any obligation which the Company may owe to any of its officers, managers, members or affiliates (collectively, "Interested Parties"), whether characterized as a salary, fee or indemnification, shall not constitute a claim against the Company until, and shall be subject to and fully subordinate to, the prior payment in full of the Loan, provided however, so long as no Default or Event of Default exists under the Loan Documents, to the extent the Company has cash flow or other available liquid assets (exclusive of any reserve accounts to be maintained under the Loan Documents) in excess of the amount necessary to make current payments of principal and interest due under the Loan Documents, the Company may pay when due (without any acceleration caused by the Company) the scheduled obligations due to the Interested Parties of the Company.

g. The Company shall have at least one "Independent Manager". An "Independent Manager" shall mean a manager of the Company who for the five-year period prior to his, her or its appointment as Independent Manager, has not been, and during the continuation of his, her or its service as Independent Manager will not be (a) a member, director, officer, employee or partner of the Company or an affiliate; (b) a customer, supplier or other person who derives more than 10% of its purchases or revenues from its activities with the Company or any affiliate; (c) a person or other entity controlling or under common control with any such member, partner, customer, supplier or other person; or (d) a member of the immediate family or any such member, director, officer, employee, partner, customer, supplier or other person. (As used herein, 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; and the term "affiliate" means, with respect to any person or entity, any other person or entity directly or indirectly controlling or controlled by or under direct or indirect control with such person or entity.

h. The unanimous consent of all of the Managers, including the consent of the Independent Manager is required for the Company, and for the Company to cause Bay Harbor, to:

i. File or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding; institute any proceedings under any applicable insolvency law or otherwise seek relief under any laws relating to the relief from debts or the protection of debtors generally;

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- ii. Seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Company or Bay Harbor or a substantial portion of either of their properties;
  - iii. Make any assignment for the benefit of the creditors of the Company or Bay Harbor;
  - iv. Take any action in furtherance of any of i, ii or iii above.
- i. The Company is prohibited from amending the provisions specified in these amended and restated Articles of Organization without approval of such amendment by Lender. Lender may condition its approval upon satisfaction of any requirements set forth in the Loan Documents and/or Lender's then current servicing standards.

#### ARTICLE VII CONFLICTING PROVISIONS

The Operating Agreement of the Company shall not contain any provisions in contravention of these amended and restated Articles of Organization and shall contain a provision that in the event of any conflict between the Operating Agreement and these amended and restated Articles of Organization, the Articles of Organization shall control.

In witness whereof, the Manager has duly executed these Second Amended and Restated Articles of Organization, in accordance with Sections 608.408 and 608.411, Florida Statutes, effective this 12<sup>th</sup> day of January, 2006.

JD Fla. Holdings, Inc.,  
a Florida corporation

By:   
Evan D. Jennings, President

ACKNOWLEDGEMENT OF REGISTERED AGENT

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In accordance with Florida Statutes §§ 608.407(c) and 608.415, the undersigned is familiar with the obligations imposed on the position of registered agent by the Florida Limited Liability Company Act and hereby accepts appointment as the registered agent of the Company.

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

In witness whereof, the undersigned has executed this Acknowledgement of Registered Agent as of the Execution Date.

CT Corporation System

By: Dale W. Morris

DALE W. MORRIS  
ASSISTANT VICE PRESIDENT