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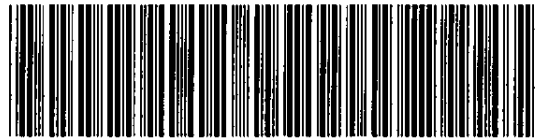
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T. HAMPTON

FEB - 3 2010

EXAMINER

COVER LETTER

**TO: Registration Section
Division of Corporations**

SUBJECT: SM-WHISPERWOOD, LLC
Name of Limited Liability Company

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

Please return all correspondence concerning this matter to the following:

KIMBERLY M. MCALLISTER, ESQ.

Name of Person

SMG PROPERTY MANAGEMENT, INC.

Firm/Company

9021 TOWN CENTER PKWY

Address

LAKEWOOD RANCH, FL 34202

City/State and Zip Code

KIM@SMGPM.COM

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

KIMBERLY M. MCALLISTER

Name of Person

at (**941**)

907-8788

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

**AMENDED AND RESTATED
ARTICLES OF ORGANIZATION
OF
SM-WHISPERWOOD, LLC, a Florida limited liability company**

FIRST: The Articles of Organization for this Limited Liability Company were filed on December 4, 2007 and assigned Florida document number L07000120760.

SECOND: The following which was duly adopted by the Limited Liability Company amends and restates the articles of organization of the Limited Liability Company in its entirety as follows:

Article 1

The name of the Limited Liability Company is: SM-Whisperwood, LLC

Article II

The street address of the principal office of the Limited Liability Company is:

9021 Town Center Pkwy
Lakewood Ranch, FL 34202

Article III

A. BUSINESS AND PURPOSE OF THE COMPANY

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

(a)(a) To engage solely in the ownership, operation and management of the real estate project known as Whisperwood Apartments located at 4100 NW 28th Lane, Gainesville, Florida, 32606 (the "Property"), pursuant to and in accordance with this Agreement; and

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

(c) Except as provided herein, the Company may enter into such contracts, agreements, ventures or arrangements with such other Persons as may be deemed necessary by the Manager

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10 FEB - 2 PM 1:57

to accomplish any of its purposes. The Company shall have the power to do all things which the Manager believes to be necessary and appropriate in furtherance of the Company's purposes.

Capitalized terms used but not defined in Article III (A) through (F) shall have the meanings ascribed to them in the Security Instrument (as defined herein).

B. LIMITATIONS/SEPARATENESS COVENANTS.

Notwithstanding any other provision of this Agreement and any provision of law that otherwise so empowers the Company, so long as any portion of the Loan (hereinafter defined) remains outstanding, the Company:

- (i) shall not engage in any business or activity, other than the ownership, operation and maintenance of the Property and activities incidental thereto;
- (ii) shall not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets other than the Property and such personalty as may be necessary for the operation of the Property and shall conduct and operate its business as presently conducted and operated;
- (iii) shall preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its formation or organization and shall do all things necessary to observe organizational formalities;
- (iv) shall not merge or consolidate with any other Person;
- (v) shall not take any action to dissolve, wind-up, terminate or liquidate in whole or in part; to sell, transfer or otherwise dispose of all or substantially all of its assets; to change its legal structure; transfer or permit the direct or indirect transfer of any partnership, membership or other equity interests, as applicable, other than Transfers permitted hereunder; issue additional partnership, membership or other equity interests, as applicable; or seek to accomplish any of the foregoing;
- (vi) shall not, without the prior unanimous written consent of all of the Company's partners, members, or shareholders, as applicable, and, if applicable, the prior unanimous written consent of one hundred percent (100%) of the members of the board of directors or of the board of managers of the Company: (A) file any insolvency, or reorganization case or proceeding, to institute proceedings to have the Company be adjudicated bankrupt or insolvent, (B) institute proceedings under any applicable insolvency law, (C) seek any relief under any law relating to relief from debts or the protection of debtors, (D) consent to the filing or institution of bankruptcy or insolvency proceedings against the Company, (E) 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

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insolvency, (F) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian, or any similar official for the Company or a substantial part of its property or a substantial part of its property, (G) make any assignment for the benefit of creditors of the Company, (H) admit in writing the inability to pay its debts generally as they become due, or (I) take action in furtherance of any of the foregoing;

- (vii) shall not amend or restate its organizational documents if such change would modify the requirements set forth in Section 33 of the Amended and Restated Multifamily Mortgage, Assignment of Rents and Security Agreement by Company in favor of CBRE Capital Markets, Inc. ("Lender") in connection with the Loan (the "Security Instrument");
- (viii) shall not own any subsidiary or make any investment in, any other Person;
- (ix) shall not commingle its assets with the assets of any other Person and shall hold all of its assets in its own name;
- (x) shall not incur any debt, secured or unsecured, direct or contingent (including, without limitation, guaranteeing any obligation), other than, (A) the loan from Lender in the amount of \$6,230,000 (the "Loan") (and any further indebtedness as described in Section 43 of the Security Instrument with regard to supplemental financing) and (B) customary unsecured trade payables incurred in the ordinary course of owning and operating the Property provided the same are not evidenced by a promissory note, do not exceed, in the aggregate, at any time a maximum amount of two percent (2%) of the original principal amount of the Indebtedness and are paid within sixty (60) days of the date incurred;
- (xi) shall maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person and shall not list its assets as assets on the financial statement of any other Person; provided, however, that the Company's assets may be included in a consolidated financial statement of its Affiliate provided that (A) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of the Company from such Affiliate and to indicate that the Company's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person and (B) such assets shall also be listed on the Company's own separate balance sheet;
- (xii) except for capital contributions or capital distributions permitted under the terms and conditions of its organizational documents, shall only enter into any contract or agreement with any general partner, member, shareholder, principal or Affiliate of Company or any guarantor, or any general partner, member, principal or Affiliate thereof, upon terms and conditions that are commercially reasonable and

10 FEB - 2 PM 1:17

substantially similar to those that would be available on an arm's-length basis with third parties;

- (xiii) shall not maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;
- (xiv) shall not assume or guaranty (excluding any guaranty that has been executed and delivered in connection with the Note) the debts or obligations of any other Person, hold itself out to be responsible for the debts of another Person, pledge its assets to secure the obligations of any other Person or otherwise pledge its assets for the benefit of any other Person, or hold out its credit as being available to satisfy the obligations of any other Person;
- (xv) shall not make or permit to remain outstanding any loans or advances to any other Person except for those investments permitted under the Loan Documents and shall not buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities);
- (xvi) shall file its own tax returns separate from those of any other Person, except to the extent that the Company is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable law, and shall pay any taxes required to be paid under applicable law;
- (xvii) shall hold itself out to the public as a legal entity separate and distinct from any other Person and conduct its business solely in its own name, shall correct any known misunderstanding regarding its separate identity and shall not identify itself or any of its Affiliates as a division or department of any other Person;
- (xviii) shall 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 and shall pay its debts and liabilities from its own assets as the same shall become due;
- (xix) shall allocate fairly and reasonably shared expenses with Affiliates (including, without limitation, shared office space) and use separate stationery, invoices and checks bearing its own name;
- (xx) shall pay (or cause the Property Manager to pay on behalf of the Company from the Company's funds) its own liabilities (including, without limitation, salaries of its own employees) from its own funds;
- (xxi) shall not acquire obligations or securities of its partners, members, shareholders, or Affiliates, as applicable;

- (xxii) except as contemplated or permitted by the property management agreement with respect to the Property Manager, shall not permit any Affiliate or constituent party independent access to its bank accounts;
- (xxiii) shall maintain a sufficient number of employees (if any) in light of its contemplated business operations and pay the salaries of its own employees, if any, only from its own funds;

C. 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 or manager shall have any ownership interest in any company property in its individual name or right and, each membership or other ownership interest in the Company shall be personal property for all purposes.

D. EFFECT OF BANKRUPTCY, DEATH OR INCOMPETENCY 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 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. Each Member waives any right it may have to agree in writing to dissolve the Company upon the bankruptcy of any Member or all the Members or the occurrence of an event that causes any Member or all the Members to cease to be members in the Company.

E. SUBORDINATION OF INDEMNITIES.

All indemnification obligations of the Company are fully subordinated to any obligations relative to the Loan or respecting the Property and such indemnification obligations shall in no event constitute a claim against the Company if cash flow in excess of amounts necessary to pay obligations under the Loan is insufficient to pay such indemnification obligations.

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Article IV

The name and Florida street address of the registered agent is:

Kimberly M. McAllister
9021 Town Center Pkwy
Lakewood Ranch, FL 34202

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Registered Agent Signature: _____


Kimberly M. McAllister

The name and address of the managing members/managers are:

Title: Manager
John S. Newsome
9021 Town Center Pkwy
Lakewood Ranch, FL 34202

Title: Manager
Michael J. Doyle
9021 Town Center Pkwy
Lakewood Ranch, FL 34202

Signature of member or an authorized representative of a member:


Michael J. Doyle, Member

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