

Division of Corporations

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**LLC AMND/RESTATE/CORRECT OR M/MG RESIGN  
PANTHER PENSACOLA/AVALON LLC**

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**AMENDED AND RESTATED  
ARTICLES OF ORGANIZATION  
OF  
PANTHER PENSACOLA/AVALON LLC**

Pursuant to the provisions of Section 608.411 of the Florida Limited Liability Company Act (the "Act"), this document amends and restates the Articles of Organization of PANTHER PENSACOLA/AVALON LLC, a Florida limited liability company, which were filed with the Florida Department of State on July 21, 2010 and amended on August 11, 2010, to read as follows:

**ARTICLE I - NAME**

The name of this limited liability company is PANTHER PENSACOLA/AVALON LLC (the "Company").

**ARTICLE II - PRINCIPAL OFFICE**

The mailing address and the street address of the principal office of the Company is 20 Mall Road, Suite 325, Burlington, Massachusetts 01803.

**ARTICLE III - REGISTERED OFFICE AND AGENT**

The street address of the registered office of the Company is 2731 Executive Park Drive, Suite 4, Weston, Florida 33331, and the name of the registered agent of the Company at that address is National Registered Agents, Inc.

**ARTICLE IV - MANAGEMENT**

The Company is manager-managed and will be managed by one or more managers in accordance with the terms of its Amended and Restated Operating Agreement. The names of the current managers of the Company are David R. Masse and David C. Sweetser.

**ARTICLE V - PURPOSE AND POWERS**

1. Purpose and Powers of the Company. The Company has been formed, and its sole purpose is to acquire (whether by ground lease or otherwise and whether directly or indirectly through one or more business trusts, partnerships, limited liability companies or other entities), develop, construct, rehabilitate, renovate, improve, maintain, finance, manage, operate, lease, sell, exchange, convey, assign, mortgage or otherwise deal with the Project, and to carry on any related lawful activity. The Company will have no other purpose without the unanimous consent of the Members. In furtherance of its purpose (but subject, however, to all other provisions of this Agreement), and without limiting in any way the powers conferred upon the Company under the Act, the Company is hereby authorized directly or indirectly:

(i) To acquire (by purchase, lease or otherwise), own, develop, construct, rehabilitate, renovate, improve, finance, manage, operate, maintain, lease, sell, convey, assign, mortgage,

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dispose of and otherwise invest in and deal with any real or personal property necessary, convenient, or incidental to the accomplishment of the purpose of the Company;

(ii) To borrow money, secured or unsecured, and issue evidences of indebtedness in furtherance of the purpose of the Company, including, without limitation, bridge, construction and permanent financing of the Property, and to secure the same by mortgages, pledges, or other liens on the Property, including, without limitation, that certain bridge loan with Wells Fargo Bank, National Association in the amount of \$17,000,000.00;

(iii) To guarantee the indebtedness and obligations of others where appropriate in furtherance of the purpose of the Company;

(iv) To repay in whole or in part, refinance, recast, increase, modify, or extend any indebtedness affecting the Property and in connection therewith to execute any extensions, renewals, or modifications of any mortgage, pledge, lease, lien, or encumbrance affecting the Property;

(v) To enter into leases of the whole or any portion of the Property, including leases with Affiliates, and leases containing one or more options or extensions, or option(s) to purchase the Property (or any portion thereof subject to any such lease);

(vi) To enter into, modify, amend, supplement, perform and carry out contracts of any kind, including contracts with Affiliates, necessary to, in connection with, or incidental to the accomplishment of the purpose of the Company and the rehabilitation, development, improvement, maintenance, management, and operation of the Property or otherwise required in connection with the Property, including contracts for the sale of all or portions of the Property;

(vii) To adjust, compromise and/or settle any and all obligations of, and claims made against, the Company or the Property;

(viii) To enter into or engage in any kind of activity necessary to, in connection with, or incidental to the accomplishment of the purpose of the Company, so long as said activities may be lawfully carried on or performed by a limited liability company under the laws of the State of Florida;

(ix) To enter into, modify, and amend on behalf of the Company (i) easements, rights of way, utility, and other agreements appropriate for the development of any portion of the Property or any real estate managed, leased, or developed by the Company from time to time; (ii) easements, cross-easements, rights of way, and other agreements required to permit access over, through, and across any portion of the Property or any real estate managed, leased, or developed by the Company from time to time; and (iii) other agreements or arrangements in connection with the development and operation of any portion of the Property and any improvements constructed thereon or any real estate managed, leased, or developed by the Company from time to time;

(x) To own stock in corporations, business trusts, and realty trusts, and to enter into joint ventures, partnerships (general or limited and whether as a general or limited partner or

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both), and other arrangements with third parties for purposes consistent with the purpose of the Company;

(xi) To invest any funds of the Company and open, maintain, and close accounts with one or more banks or other financial institutions; and

(xii) To distribute and/or sell all or portions of any interests in corporations, business trusts, realty trusts, joint ventures, limited liability companies, and/or partnerships (general or limited and whether as a general or limited partner or both) created by and initially owned in whole or in part by the Company and to which any of the Property may have been transferred or will be transferred.

## 2. Single Purpose Entity.

As required by the terms of the mortgage loan to the Company from Wells Fargo Bank, National Association in the original principal amount of \$17,000,000.00 (the "Indebtedness"), at all times since the formation of the Company and until the Indebtedness is paid in full, the Company:

(1) shall not engage in any business or activity, other than the ownership, operation and maintenance of the Project and activities incidental thereto;

(2) shall not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets other than the Project and such personal property as may be necessary for the operation of the Project and shall conduct and operate its business as presently conducted and operated;

(3) 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;

(4) shall not merge or consolidate with any other Person;

(5) 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 under the documents evidencing the Indebtedness (the "Loan Documents"); issue additional Company member or other equity interests; or seek to accomplish any of the foregoing;

(6) shall not, without the prior unanimous written consent of all of the Company's Members 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

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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 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, (G) make any assignment for the benefit of creditors of the Company, (H) admit in writing the Company's inability to pay its debts generally as they become due, or (I) take action in furtherance of any of the foregoing;

(1) shall not amend or restate this Agreement or any other organizational document of the Company if such change would modify this Section 2;

(2) shall not own any subsidiary or make any investment in any other Person;

(3) shall not commingle its assets with the assets of any other Person and shall hold all of its assets in its own name;

(4) shall not incur any debt, secured or unsecured, direct or contingent (including, without limitation, guaranteeing any obligation), other than, (A) the Indebtedness (and any further indebtedness as described in the Loan Documents with regard to Supplemental Mortgages (as defined in the Loan Documents)) and (B) customary unsecured trade payables incurred in the ordinary course of owning and operating the Project 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 unless subject to a good faith dispute;

(5) 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;

(6) except for capital contributions and distributions permitted under the terms and conditions of this Agreement, shall only enter into any contract or agreement with any Member or affiliate of the Company or any guarantor, or any Member or affiliate thereof, upon terms and conditions that are commercially reasonable and substantially similar to those that would be available on an arm's-length basis with third parties;

(7) 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;

(8) shall not assume or guaranty (excluding any guaranty that has been executed and delivered in connection with the Loan Documents) the debts or obligations of any other Person, hold itself out to be responsible for the debts of another Person, pledge its assets to

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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 except a tenant of the Project in connection with tenant improvements;

(9) shall not make or permit to remain outstanding any loans or advances to any other Person except loans or advances to tenants of the Project in connection with tenant improvements and 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);

(10) 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;

(11) 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;

(12) 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 provided there are sufficient funds from the operation of the Project and the foregoing shall not require any Member or Manager of the Company to make any additional capital contribution to the Company;

(13) 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 provided any property manager for the Project and/or any administrative service provider, which may be an affiliate, may in such capacity make payments and issue invoices with respect to the Project or the Company in its own name on behalf of the Company;

(14) 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, if any) from its own funds;

(15) shall not acquire obligations or securities of Members or affiliates;

(16) 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;

(17) 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;

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2. Certain Definitions. Capitalized terms that are used but not defined in this Article IV, will have the meanings given to them in the Company's Amended and Restated Operating Agreement.

IN WITNESS WHEREOF, the undersigned authorized representative of a member of the Company has duly executed these Amended and Restated Articles of Organization on this 12<sup>th</sup> day of August, 2010.

  
\_\_\_\_\_  
David R. Masse, Authorized Representative  
of a Member

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**ACCEPTANCE OF REGISTERED AGENT**

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 to comply 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 as provided for in Chapter 608, Florida Statutes.

NATIONAL REGISTERED AGENTS, INC.

By: Michelle Holden, Asst. Sec.Name: Michelle HoldenTitle: Asst. Secretary

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