

# PO2000040197

Law Offices  
Sakowitz & Sakowitz

CHARTERED

Theodore J. Sakowitz (1923 - 1999)  
Alan B. Sakowitz

April 11, 2002

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
02 APR 12 PM 4:40

Secretary of State  
Division of Corporations  
Attn: Wanda Cunningham  
409 E. Gaines Street  
Tallahassee, FL 32399

RE: Cortez Pointe, Inc., Cortez Pointe, LLC, Cortez Pointe I, Inc., Cortez Pointe I, LLC

Dear Secretary of State:

200005258252--2  
-04/15/02--01002--024  
\*\*\*\*\*400.00 \*\*\*\*\*70.00

As per our conversation, please find the enclosed for filing:

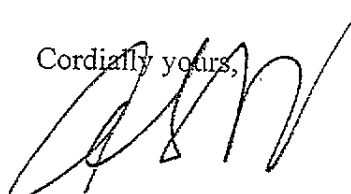
1. Articles of Organization of Cortez Pointe, LLC
2. Articles of Organization of Cortez Pointe I, LLC
3. Articles of Corporation of Cortez Pointe, Inc.
4. Articles of Corporation of Cortez Pointe I, Inc.

200005258252--2  
-04/15/02--01002--025  
\*\*\*\*\*17.50 \*\*\*\*\*8.75

along with our check for filing fees in the amount of \$400.00 - \$70.00 for each formation of the corporations, \$125.00 for each formation of the organizations, \$5.00 for Certificates of Good Standing for the organizations and an additional check for \$17.50 for the Certificates of Good Standing for the corporations.

Please file same and return a stamped copy to us in the enclosed FedEx envelope as soon as possible..

Cordially yours,

  
Alan Sakowitz  
for the firm

AS/cac

The Concourse Plaza, Suite 401, 1111 Kane Concourse, Bay Harbor Islands, Florida 33154-2042  
Miami-Dade (305) 865-6700 □ Fax (305) 865-3434

4-12-02  
WC

FILED  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
02 APR '12 PM 4:40

## **ARTICLES OF INCORPORATION OF CORTEZ POINTE, INC.**

The undersigned subscriber to these articles of incorporation, being a natural person and competent to contract, hereby forms a Corporation for profit under the laws of the State of Florida.

### **ARTICLE I. NAME**

The name of this Corporation is Cortez Pointe, Inc.

### **ARTICLE II. CAPITAL STOCK AUTHORIZED**

a. The maximum number of shares of stock that the Corporation is authorized to have outstanding at any time shall be 7500 shares of common stock at one dollar (\$1.00) per share par value. The Company shall not issue any additional common stock while any amount remains outstanding under the Mortgage Loan.

b. The consideration to be paid for each share shall be payable in lawful money, property, labor or services.

### **ARTICLE III. DURATION**

The Corporation shall have perpetual existence.

### **ARTICLE IV. INITIAL REGISTERED OFFICE AND AGENT**

The street address of the initial registered office and the principal place of business of this Corporation is: ALAN SAKOWITZ, c/o Sakowitz & Sakowitz, Chartered, 1111 Kane Concourse, Suite 401, Bay Harbor Islands, Florida 33154 and the name of the initial registered agent of this Corporation at that address is ALAN SAKOWITZ.

### **ARTICLE V. INCORPORATOR**

The name and address of the person signing these articles is:

**Alan Sakowitz  
1111 Kane Concourse, Suite 401  
Bay Harbor Islands, FL 33154**

## **ARTICLE VI. INITIAL BOARD OF DIRECTORS**

The number of members of the initial board of directors shall be two. The number of Directors may be increased or decreased from time to time by a resolution of the majority of the Stockholders but shall never be less than one. The name and address of the initial Directors of this Corporation is:

Alan Sakowitz  
1111 Kane Concourse, Suite 401  
Bay Harbor Islands, FL 33154

Maurice Egozi  
1111 Kane Concourse, Suite 401  
Bay Harbor Islands, FL 33154

## **ARTICLE VII. INFORMAL SHAREHOLDER ACTION**

Any action of the Shareholders may be taken without a meeting if consent in writing setting forth the action so taken shall be signed by all the Shareholders entitled to vote upon such action at a meeting and filed with the Secretary of the Corporation as part of the corporate records.

## **ARTICLE VIII. INFORMAL DIRECTOR ACTION**

If all of the Directors severally or collectively consent in writing to any action taken or to be taken by the Corporation, and the writings evidencing their consent are filed with the Secretary of the Corporation, the action shall be as valid as though it had been authorized at a meeting of the Board of Directors.

## **ARTICLE IX. INDEMNIFICATION**

Subject to Article XV, the Corporation shall indemnify each officer, director, former officer and former director, against all expenses reasonably incurred by them in connection with or arising out of any action, suit or proceeding which they may be involved, by reason of them being or having been a director or officer of the Corporation, to the fullest extent permitted by law.

## **ARTICLE X. BYLAW AGREEMENT**

The power to adopt, alter, amend or repeal the Bylaws of this Corporation shall be vested in the Board of Directors, and Stockholders provided that such amendment be in compliance with the laws of Florida.

## **ARTICLE XI. PREEMPTIVE RIGHTS**

The holders of the common stock of this Corporation shall have preemptive rights to purchase, at prices, terms and conditions that shall be fixed by the Board of Directors, those shares

of the common stock of this Corporation which may be issued from time to time for money, property or past services in addition to that stock authorized and issued by the Corporation. The preemptive right of any holder is determined by the ratio of the authorized and issued shares of common stock held by the holder and all shares of common stock currently authorized and issued.

#### **ARTICLE XII. ACCEPTANCE OF REGISTERED AGENT**

The above named registered agent agrees to act in said capacity and to comply with the provisions of all statutes relative to the performance as a registered agent.

#### **ARTICLE XIII. PURPOSE**

Notwithstanding any other provision of this Articles of Incorporation, the nature of the business and of the purposes to be conducted and promoted by the corporation (the "Corporation") is to engage solely in the activity of acting as a managing member of Cortez Pointe, LLC (the "Company") whose purpose is to acquire from OAIC Florida Partners, Limited Partners, Florida Limited Partners certain parcels of real property, together with all improvements located thereon, in the City of Bradenton, State of Florida (the "Property") and own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property as permitted under the First Mortgage. The Corporation shall exercise all powers enumerated in Chapter 607 of The Florida Statutes of the State of Florida necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein."

#### **ARTICLE XIV. CERTAIN PROHIBITED ACTIVITIES**

Notwithstanding any other provision of this Articles of Incorporation, the Corporation shall only cause the Company to incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien exists on any portion of the Property, the Corporation shall not and shall not cause the Company to incur, assume, or guaranty any other indebtedness. For so long as the Company remains mortgagor of the Property, the Corporation shall not cause the Company to dissolve, liquidate, merge or sell substantially all of its assets. For so long as a mortgage lien exists on any portion of the Property, the Corporation shall not voluntarily commence a case with respect to itself or cause the Company to voluntarily commence a case with respect to itself, as debtor, under the Federal Bankruptcy Code or any similar federal or state statute without the unanimous consent of the Board of Directors including its Independent Director. For so long as a mortgage lien exists on any portion of the Property, no material amendment, including Articles XIII through XVII or amendments inconsistent with such Articles, to this Articles of Incorporation or to the Corporation's By-Laws may be made without first obtaining approval of the mortgagees holding first mortgages on any portion of the Property, or, after the securitization of the Loan, only if the Company receives (i) confirmation from each of the applicable rating agencies that such amendment would not

result in the qualification, withdrawal or downgrade of any securities rating and (ii) approval of such amendment by the mortgagee holding the First Mortgage.”

No transfer of any direct or indirect ownership interest in the Corporation may be made such that the transferee owns, in the aggregate with the ownership interests of its affiliates and family members in the Corporation, more than a forty-nine percent (49%) interest in the Corporation (or such other interest as specified in the Commitment Letter or by a rating agency), unless (i) such transfer is conditioned upon the delivery of an acceptable non-consolidation opinion to the mortgagee holding the First Mortgage and to any applicable rating agency concerning, as applicable, the Corporation, the new transferee and/or their respective owners and (ii) the applicable rating agencies confirm that the transfer will not result in a qualification, withdrawal or downgrade of any securities rating.

#### **ARTICLE XV. INDEMNIFICATION**

Notwithstanding any other provision of this Articles of Incorporation, any indemnification of the Corporation’s directors and officers shall be fully subordinated to any obligations respecting the Company or the Property (including, without limitation, the First Mortgage) and such indemnification shall not constitute a claim against the Corporation or the Company in the event that cash flow in excess of amounts necessary to pay holders of such obligations is insufficient to pay such obligations.

#### **ARTICLE XVI. SEPARATENESS COVENANTS**

Notwithstanding any other provision of this Articles of Incorporation, 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 Articles of Incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

1. It shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate or, if it shares office space with its parent or any affiliate, it shall allocate fairly and reasonably any overhead and expense for shared office space.

2. It will not engage, directly or indirectly, in any business other than to serve as the managing member of the Company and it will conduct and operate its business as presently conducted and operated.

3. Its Board of Directors shall hold appropriate meetings (or act by unanimous consent) to authorize all appropriate corporate actions, and in authorizing such actions, shall observe all corporate formalities.

It will not enter into any contract or agreement with its parent, any affiliate of the Corporation or any constituent party of the Corporation except upon terms and conditions that are commercially reasonable and substantially similar to those that would be available on an arms-length basis with unrelated third parties.

4. It has not incurred and will not incur any indebtedness and will not permit the Company to incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the indebtedness secured by the mortgage lien 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 mortgage lien may be secured (subordinate or *pari passu*) by the Property.

5. It has not made and will not make any loans or advances to any third party including its parent, any affiliate of the Corporation or constituent party of the Corporation and shall not acquire obligations or securities of its affiliates.

6. 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.

7. It has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and it will not amend, modify or otherwise change the articles of incorporation or By-Laws of the Corporation without the prior written consent of the mortgage lien holder or, after the securitization of the Loan, only if the Corporation receives (i) confirmation from each of the applicable rating agencies that such amendment would not result in the qualification, withdrawal or downgrade of any securities rating and (ii) approval of such amendment by the mortgagee holding the First Mortgage.

8. It will maintain all of its books, records, financial statements and bank accounts separate from those of its parent, its affiliates and any constituent party and the Corporation will file its own separate tax returns. It shall maintain its books, records, resolutions and agreements as official records.

9. 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 its parent, any affiliate of the Corporation or any constituent party of the Corporation), 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 separate stationery, invoices and checks.

10. 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.

11. Neither the Corporation nor any constituent party will seek or permit the dissolution, winding up, liquidation, consolidation or merger in whole or in part, of the Corporation, 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.

12. It will not commingle the funds and other assets of the Corporation with those of its parent, any affiliate or constituent party, or any affiliate of any constituent party, or any other person.

13. 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.

14. 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.

15. It shall pay any liabilities out of its own funds, including salaries of any employees.

16. The Corporation shall maintain a sufficient number of employees in light of its contemplated business operations.

17. The Corporation shall not guarantee or become obligated for the debts of any other entity or person.

18. The Corporation shall not form, acquire or hold any subsidiary other than the Company.

19. The Corporation shall cause the Company to comply with the provisions of articles H through N of its Articles of Organization.

20. The Corporation shall maintain at least a .5% ownership interest in Company.

For purpose of these Articles, the following terms shall have the following meanings:

"affiliate" means any person controlling or controlled by or under common control with the Corporation, including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any director, officer or employee of the

corporation, its parent, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from the Corporation, its parent or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Company" shall mean Cortez Pointe, LLC.

"First Mortgage" means the lien on the Property in favor of Deutsche Banc Mortgage Capital, L.L.C., its successors or assigns

"Independent Director" means a director of the Corporation who is not at the time of initial appointment, or at any time while serving as a director of the Corporation, 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 Director of the Corporation), officer, employee, partner, attorney or counsel of the Corporation, the Company, or any affiliate of either of them; (b) a customer, supplier or other person who derives any of its purchases or revenues from its activities with the Corporation, the Company, or any affiliate of either of them; (c) a person or other entity controlling or under common control with any such stockholder, partner, customer, creditor, supplier or other person; or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, customer, creditor, 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.)

"parent" means, with respect to a corporation, any other corporation owning or controlling, directly or indirectly, fifty percent (50%) or more of the voting stock of the corporation.

"person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

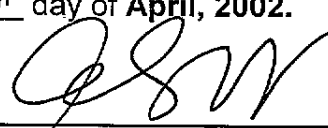
## **ARTICLE XVII. VOTING**

When voting on matters concerning the Company, notwithstanding that the Company is not then insolvent, the Corporation shall take into account the interest of the



Company's creditors, as well as those of its members to the maximum extent consistent with applicable law.

**IN WITNESS WHEREOF**, The undersigned Incorporator has executed these Articles of Incorporation in the State of Florida, this 11<sup>th</sup> day of **April, 2002**.

  
\_\_\_\_\_  
Alan Sakowitz, Incorporator

  
\_\_\_\_\_  
Alan Sakowitz, Registered Agent

STATE OF FLORIDA                    }  
                                                      }  
COUNTY OF MIAMI-DADE        }  
                                                      } SS

I **HEREBY CERTIFY** that before me, the undersigned authority, personally appeared **Alan Sakowitz** to me personally known to be the person described in and who executed the foregoing Articles of Incorporation, and acknowledged before me that said person subscribed to those Articles of Incorporation for the uses and purposes therein expressed.

**WITNESS** my hand and official seal in the county and state last aforesaid this 11<sup>th</sup> day of **April, 2002**.



Olga M. Lorenzo  
Commission # CG 884374  
Expires Dec. 14, 2003  
Bonded Thru  
Atlantic Bonding Co., Inc.

  
\_\_\_\_\_  
NOTARY PUBLIC  
State of Florida at Large

My commission expires: