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COVER LETTER

Department of State
Division of Corporations
P. O. Box 6327
Tallahassee, FL 32314

SUBJECT: JD Fla. Holdings, Inc.
(PROPOSED CORPORATE NAME - MUST INCLUDE SUFFIX)

Enclosed are an original and one (1) copy of the articles of incorporation and a check for:

☐ \$70.00
Filing Fee

☐ \$78.75
Filing Fee
& Certificate of Status

☐ \$78.75
Filing Fee
& Certified Copy

☒ \$87.50
Filing Fee,
Certified Copy
& Certificate of
Status

ADDITIONAL COPY REQUIRED

FROM: Sam E. Thomas, Sam E. Thomas & Associates
Name (Printed or typed)

3715 Northside Parkway NW, 400 Northcreek, Ste 650
Address

Atlanta, Georgia 30327
City, State & Zip

(404) 350-8337
Daytime Telephone number

NOTE: Please provide the original and one copy of the articles.

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CLERK OF DISTRICT COURT
TALLAHASSEE, FLORIDA

**ARTICLES OF INCORPORATION
OF
JD FLA. HOLDINGS, INC.**

**ARTICLE I
NAME**

The name of the corporation is JD FLA. HOLDINGS, INC. (the "Corporation").

**ARTICLE II
PRINCIPAL PLACE OF BUSINESS AND MAILING ADDRESS**

The principal place of business and mailing address of the Corporation is 3340 Peachtree Road NE, Suite 2270, Atlanta, Georgia 30326.

**ARTICLE III
PURPOSE**

The Corporation is organized for profit and the purpose for which the Corporation is formed is limited solely to being the managing member of Bay Harbor Homes of Fort Myers, LLC, a Florida limited liability company ("Fort Myers") which acts as, and exercises all of the authority of, the managing member of Bay Harbor Homes, LLC, a Delaware limited liability company ("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 corporation may be organized under Florida law that is incident, necessary and appropriate to accomplish the foregoing.

**ARTICLE IV
AUTHORIZED SHARES OF STOCK**

The Corporation shall have authority to issue One Million shares (1,000,000) of stock of the Corporation.

**ARTICLE V
INITIAL DIRECTORS**

The Corporation shall have two (2) initial Directors, whose names and addresses are as follows:

Evan D. Jennings
3340 Peachtree Road NE
Suite 2270
Atlanta, Georgia 30326

and

Eduard deGuardiola
1360 Peachtree Street NE
Suite 1000
Atlanta, Georgia 30309

**ARTICLE VI
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.

**ARTICLE VII
INCORPORATOR**

The name and address of the Incorporator is Sam E. Thomas, Esquire, 3715 Northside Parkway NW, 400 Northcreek, Suite 650, Atlanta, Georgia 30327.

**ARTICLE VIII
SEPARATENESS COVENANTS**

Notwithstanding any other provisions of these 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 Corporation is prohibited from incurring indebtedness.
- b. The Corporation is prohibited from engaging in any dissolution, liquidation, consolidation, merger or sale of assets and from causing Fort Myers or 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 Corporation 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 Corporation is required to continue serving in the capacity as the special purpose member of Fort Myers so long as the Loan is outstanding.
- e. The Corporation is required on its own behalf, and covenants to cause Fort Myers and Bay Harbor to:
 - i. Maintain books and records separate from any other person or entity;


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- ii. Maintain its bank accounts separate from any other person or entity;
 - 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 stationery, 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 Corporation may owe to any of its officers, managers, shareholders or affiliates (collectively, "Interested Parties"), whether characterized as a salary, fee or indemnification, shall not constitute a claim against the Corporation 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 Corporation 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 Corporation may pay when due (without any acceleration caused by the Corporation) the scheduled obligations due to the Interested Parties of the Corporation.
- g. The unanimous consent of all of the Directors is required for the Corporation, and for the Corporation to cause Fort Myers and 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;
 - ii. Seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Corporation, Fort Myers or Bay Harbor or a substantial portion of either of their properties;
 - iii. Make any assignment for the benefit of the creditors of the Corporation, Fort Myers or Bay Harbor;
 - iv. Take any action in furtherance of any of i, ii or iii above.
- h. The Corporation is prohibited from amending the provisions specified in these Articles of Incorporation 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 IX
CONFLICTING PROVISIONS**

The By-Laws of the Corporation shall not contain any provisions in contravention of these Articles of Incorporation and shall contain a provision that in the event of any conflict between the By-Laws and these Articles of Incorporation, the Articles of Incorporation shall control.

In witness whereof, the Incorporator has duly executed these Articles of Incorporation, effective this 9th day of January, 2006.

By: 
Sam E. Thomas, Incorporator

ACKNOWLEDGEMENT OF REGISTERED AGENT

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 Corporation Act and hereby accepts appointment as the registered agent of the Company.

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

CT Corporation System

By: _____

Joan Bolden

JOAN BOLDEN

ASSISTANT SECRETARY

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TALLAHASSEE, FLORIDA