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BERGER SINGERMAN → 8#08394#0003#18502050380

NO. 124

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Division of Corporations

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BASIC AMENDMENT

DEERFIELD 21 CORPORATION

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ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
DEERFIELD 21 CORPORATION

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CLERK OF SUPERIOR COURT
TALLAHASSEE, FLORIDA

Pursuant to the provisions of Section 607.1006, Florida Statutes, Deerfield 21 Corporation, a Florida corporation (the "Corporation"), document number 352787 adopts the following amendment to its Articles of Incorporation:

1. The Corporation's Articles of Incorporation are hereby amended by deleting Article II in its entirety and inserting a new Article II in its place and by adding Articles XII, XIII and XIV to read as follows:

ARTICLE II. NATURE OF BUSINESS

Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation, is to engage solely in the following activities:

To acquire that certain parcel of real property, together with all improvements located thereon, located at 2096 N.E. 2nd Street, Deerfield Beach, Florida and commonly known as *Howard Johnson Ocean Resort Hotel* and to acquire the ownership of, or to license, a parking lot or facility for the provision of parking for such hotel business (collectively, the "Property").

To own, hold, sell, assign, transfer, operate, lease, manage, mortgage, pledge and otherwise deal with the Property.

To exercise all powers enumerated in the Florida Business Corporation Act, incidental, necessary or appropriate to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

ARTICLE XII. CERTAIN PROHIBITED ACTIVITIES

Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern for so long as any mortgage lien exists on the Property in favor of Morgan Stanley Mortgage Capital, Inc. or its successors and assigns (collectively, the "Morgan Lender"): (a) the Corporation shall only incur indebtedness in an amount necessary to acquire, operate and maintain the Property, (b) the Corporation shall not incur, assume, or guaranty any other indebtedness, except for trade payables in the ordinary course of the Corporation's business of owning and operating the Property, (c) the Corporation shall not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale or transfers of stock interest, and (d) the

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Corporation will not without the unanimous consent of the Board of Directors: (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 any 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 or any other entity, (iii) make an assignment of its assets for the benefit of its creditors or an assignment of the assets of another entity for the benefit of such entity's creditors, or (iv) take any action in furtherance of the foregoing. For so long as a mortgage lien in favor of the Morgan Lender exists on the Property, no material amendment to these Articles of Incorporation or to the Corporation's By-Laws may be made without first obtaining approval of the mortgagee holding a first mortgage lien in favor of the Morgan Lender on the Property.

ARTICLE XIII. INDEMNIFICATION

Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: So long as the mortgage lien in favor of the Morgan Lender exists on the Property, any indemnification shall be fully subordinated to any obligations respecting the Property and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations.

ARTICLE XIV. SEPARATENESS COVENANTS

Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: For so long as any mortgage lien in favor of the Morgan Lender exists on the Property, in order to preserve and ensure the Corporation's separate and distinct corporate identity, in addition to the other provisions set forth in these Articles of Incorporation, the Corporation shall conduct its affairs in accordance with the following provisions:

- a. The Corporation shall establish and maintain an office through which its business shall be conducted separate and apart from those of its parent and any affiliate and shall allocate fairly and reasonably any overhead for shared office space.
- b. The Corporation shall maintain separate corporate records, books and accounts from those of its parent and any affiliate or any other person.
- c. The Corporation shall not commingle funds or assets with those of its parent, any affiliate or any other person.
- d. The Corporation shall conduct its business and hold its assets in its own name.

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- e. The Corporation shall maintain financial statements, accounting statements and prepare tax returns separate from its parent, any affiliate or any other person.
- f. The Corporation shall pay any liabilities out of its own funds, including salaries of any employees, not funds of its parent or any affiliate, and use diligent efforts to maintain a sufficient number of employees in light of its contemplated business operations.
- g. The Corporation shall maintain adequate capital in light of the Corporation's contemplated business operations, provided that no shareholder of the Corporation shall have any obligation to make any additional contributions of capital to the Corporation.
- h. The Corporation shall maintain an arm's length relationship with its parent and any affiliate.
- i. The Corporation shall not assume or guarantee or become obligated for the debts of any other entity, including its parent or any affiliate or hold out its credit as being available to satisfy the obligations of others.
- j. The Corporation shall not have any of its obligations guaranteed by any member, general partner or affiliate, except the guarantor of the mortgage loan.
- k. The Corporation shall not pledge its assets for the benefit of any other person or entity or make an advance or loan to any person or entity, including any affiliate.
- l. The Corporation shall not acquire obligations or securities of its partners, members or shareholders or any affiliate.
- m. The Corporation shall use stationery, invoices and checks separate from any affiliate or any other person.
- n. The Corporation shall hold itself out as an entity separate and distinct from any affiliate and not as a division, department or part of any other person or entity.
- o. The Corporation shall not identify its members or any affiliates as a division or part of the Corporation.
- p. The Corporation shall correct any known misunderstanding regarding the Corporation's separate identity.
- q. The Corporation shall maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other entity.
- r. The Corporation shall not share a common logo with any affiliate or any other person; provided that the Corporation may use the "*Howard Johnson*" logo (or any replacement or alternate logo by the Property's brand) in the operation of the Property.

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s. The Corporation shall not acquire or own any material assets other than the Property and such incidental personal property as may be necessary for the operation of the Property.

t. The Corporation shall maintain its books, records, resolutions and agreements as official records.

u. The Corporation shall hold regular meetings, as appropriate, to conduct its business and observes all Corporation level formalities and record keeping.

v. The Corporation's 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.

w. For purpose of this Article XIV, the following terms shall have the following meanings:


- i. "affiliate" means any person controlling or controlled by or under common control with the parent, 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, the Corporation's 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.
- ii. "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.
- iii. "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.

2. These Articles of Amendment were approved by Written Consent in Lieu of Special Meetings of the Board of Directors and Shareholders of the Corporation dated as of September 15, 2005. The number of votes cast for the amendment by the shareholders was sufficient for approval.

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The undersigned has executed these Articles of Amendment as of the 15th
day of ~~August~~, 2005.
SEPTEMBER

DEERFIELD 21 CORPORATION

By: 
Name: Cheryl H. Chase
Title: exec. vice president