

06/02/2005 12:21 1

OSBORNE&OSBORNEPA

PAGE 02/07

Division of Corporations

Page 1 of 1

00000006345

Florida Department of State
Division of Corporations
Public Access System

Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H05000137806 3)))

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To:

Division of Corporations
Fax Number : (850)205-0383

From:

Account Name : OSBORNE & OSBORNE, P.A.
Account Number : I20000000119
Phone : (561)395-1000
Fax Number : (561)368-6930

05 JUN -2 PM 12:52
CORPORATIONS

FILED
05 JUN -2 AM 8:44
TALLAHASSEE, FLORIDA
SECRETARY OF STATE

6/06/03/05

LIMITED LIABILITY AMENDMENT

BETA EPSILON/CADILLAC, L.L.C.

Certificate of Status	0
Certified Copy	0
Page Count	06
Estimated Charge	\$25.00

Electronic Filing Menu

Corporate Filing

Public Access Help

7p

. (((H05000137806 3)))

SECOND AMENDED AND RESTATED**ARTICLES OF ORGANIZATION****of****BETA EPSILON/CADILLAC, L.L.C.**

The undersigned, being a member, desiring to form a limited liability company under and pursuant to the Florida Limited Liability Company Act, Chapter 608, Florida Statutes, does hereby adopt the following Articles of Organization:

ARTICLE I
DURATION

BETA EPSILON/CADILLAC, L.L.C. shall exist perpetually or until dissolved in a manner provided by law, or as provided in the regulations adopted by the members.

ARTICLE II
NAME AND PRINCIPAL PLACE OF BUSINESS

The name of the limited liability company shall be BETA EPSILON/CADILLAC, L.L.C. and its principal and mailing office shall be located at 4000 North Federal Highway, Suite 206, Boca Raton, Florida 33431, but it shall have the power and authority to establish branch offices at any other place or places as the members may designate.

ARTICLE III
INITIAL REGISTERED OFFICE AND REGISTERED AGENT

The address of the initial registered office of BETA EPSILON/CADILLAC, L.L.C. is 798 South Federal Highway, Suite 100, Boca Raton, Florida 33432, and the name of the company's initial registered agent at that address is Linda O. MacLaren.

ARTICLE IV
MANAGEMENT

Management of BETA EPSILON/CADILLAC, L.L.C. is reserved to its Managers and is, therefore, manager/managed, and the name and address of the Manager is:

Beta Epsilon/Cadillac, Inc. 4000 North Federal Highway
Suite 206
Boca Raton, Florida 33431

- 1 -

(((H05000137806 3)))

(((H05000137806 3)))

Such Manager shall serve in such capacity until the first annual meeting of the Members or until their successors are duly elected and qualified.

ARTICLE V

PURPOSES AND POWERS

The purpose for which the Company is being formed is to own, operate and develop the hotel facility located at 3925 Collins Avenue, Miami Beach, Florida, known as Courtyard by Marriott Miami Beach ("Property"). All property owned by the Company shall be owned by the Company as an entity. Each member's interest in the Company shall be personal property as set forth in Florida Statutes Section 608.431.

Notwithstanding any provision hereof to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Company, is to engage solely in the following activities:

- (i) To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.
- (ii) To exercise all powers enumerated in the Limited Liability Company Act of Florida necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

ARTICLE VI

PROHIBITED ACTIVITIES

Notwithstanding any provision hereof to the contrary and for so long as a mortgage lien exists on any portion of the Property, the following shall govern:

- (i) The Company shall only incur indebtedness in an amount necessary to acquire, operate and maintain the Property and shall not incur, assume, or guaranty any other indebtedness.
- (ii) The Company shall not consolidate or merge with or into any other entity or convey or transfer its properties and assets substantially as an entirety to any entity unless (A) the entity (if other than the Company) formed or surviving such consolidation or merger or that acquired by conveyance or transfer the properties and assets of the Company substantially as an entirety (1) shall be organized and existing under the laws of the United States of America or any State or the District of Columbia, (2) shall include in its organizational documents the same limitations set forth in this Article VI and in Article VII, and (3) shall expressly assume the due and punctual performance of the Company's obligations; and (B) immediately after giving effect to such transaction, no default or event of default under any agreement to which it is a party shall have been committed by this Company and be continuing.

(((H05000137806 3)))

(((H05000137806 3)))

(iii) The Company will not 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 members.

ARTICLE VII SEPARATENESS COVENANTS

Notwithstanding any provision hereof to the contrary and for so long as a mortgage lien exists on any portion of the Property, in order to preserve and ensure its separate and distinct company identity, in addition to the other provisions set forth herein, the Company shall conduct its affairs in accordance with the following provisions:

(i) It shall not, nor will any managing member thereof, as applicable, amend, modify or otherwise change its articles or certificate of organization or incorporate, operating agreement, bylaws, or other formation agreement or document, as applicable, in any material term or manner, or in a manner which adversely affects the Company's existence as a single purpose entity.

(ii) It shall not liquidate or dissolve (or suffer any liquidation or dissolution), 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 entity.

(iii) It does not own and shall not own any asset other than (A) the Property, and (B) incidental personal property necessary for the operation of the Property.

(iv) It is not engaged and shall not engage, either directly or indirectly, in any business other than the ownership, management and operation of the Property.

(v) It shall not enter into any contract or agreement with any affiliate or member of the Company, as applicable, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than an affiliate.

(vi) It has not incurred and shall not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (A) the debt evidenced by the first mortgage lien on the Property, and (B) trade payables or accrued expenses incurred in the ordinary course of business of operating the Property customarily satisfied within thirty (30) days and in an aggregate amount not to exceed the lesser of one percent (1.0%) of the existing principal balance of the note evidencing the debt secured by the Property or \$100,000.00, and no other debt will be secured (senior, subordinate or pari passu) by the Property.

(vii) It has not made and will not make any loans or advances to any third party.

(viii) It is and shall be solvent and pay its debts from its assets as the same shall become

(((H05000137806 3)))

(((H05000137806 3)))

due.

(ix) It has done or caused to be done and will do all things necessary to preserve its existence, and will observe all formalities applicable to it.

(x) It will conduct and operate its business in its own name and as presently conducted and operated.

(xi) It will be, and at all times shall hold itself out to the public as, a legal entity separate and distinct from any other entity (including, without limitation, any affiliate or member, as applicable).

(xii) It shall file its own tax returns.

(xiii) It 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.

(xiv) It has and shall maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate, member or any other person.

(xv) It shall establish and maintain an office through which its business shall be conducted, separate and apart from that of any of its affiliates or members, or it shall fairly and reasonably allocate any overhead for shared office space.

(xvi) It shall maintain separate records, financial statements and books of account from those of any affiliate or member.

(xvii) It shall not commingle assets with those of any affiliate or member.

(xviii) It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of any affiliate.

(xix) It shall not guarantee or become obligated for the debts of any other entity, including any affiliate or member, or hold out its credit as being available to satisfy the obligations of others.

(xx) It shall use stationery, invoices and checks separate from any affiliate or member.

(xxi) It shall not pledge its assets for the benefit of any other entity, including any affiliate or member.

(xxii) It shall at all times have a special purpose corporate managing member.

(((H05000137806 3)))

(((H05000137806 3)))

Notwithstanding any provision hereof to the contrary, the following shall govern: To the extent permissible under applicable federal and state law, the vote of a majority-in-interest of the remaining members is sufficient to continue the life of the Company. If such vote is not obtained, for so long as a mortgage lien exists on any portion of the Property the Company shall not liquidate the Property without first obtaining approval of the Mortgages holding first mortgages on any portion of the Property. Such holders may continue to exercise all of their rights under the existing security agreements or mortgages until the debt underlying the mortgage liens has been paid in full or otherwise completely discharged.

Notwithstanding any provision hereof to the contrary, the following shall govern: When acting on matters subject to the vote of the members, notwithstanding that the Company is not then insolvent, all of the members shall take into account the interest of the Company's creditors, as well as those of the members.

Notwithstanding any provision hereof to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the Property, including, without limitation the first mortgage on the Property, and shall not constitute a claim against the Company in the event that cash flow is insufficient to pay such obligations.

FILED
05 JUN -2 AM 8:44
CLERK OF COURT
TALLAHASSEE, FLORIDA

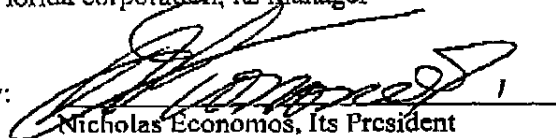
(((H05000137806 3)))

((H05000137806 3)))

Executed by the undersigned at Boca Raton, Palm Beach County, Florida on the 31 day
of May, 2005.

BETA/EPSILON CADILLAC, INC.,
a Florida corporation, its manager

By:


Nicholas Economos, Its President
Manager

H:\LIBRARY\00\22601\doc\Sevnm\Amended\Articles.vpd

FILED
05 JUN -2 AM 8:44
TALLAHASSEE, FLORIDA

((H05000137806 3)))