

Division of Corporations

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LLC AMND/RESTATE/CORRECT OR M/MG RESIGN  
HEATHROW HOTEL MANAGERS, LLC

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**AMENDED AND RESTATED  
ARTICLES OF ORGANIZATION  
OF  
HEATHROW HOTEL MANAGERS, LLC**

**ARTICLE I**

Name and Duration

The name of the limited liability company is Heathrow Hotel Managers, LLC (the "Company"). The Company filed its original Articles of Organization with the Florida Department of State, Division of Corporations on February 27, 2001. The duration of the Company commenced upon such date of filing and shall be perpetual.

**ARTICLE II**

Principal Office

The mailing address and the street address of the principal office of the Company is 1480 Royal Palm Beach Blvd., Suite A, Royal Palm Beach, Florida 33411, or such other place as the Manager of the Company may determine from time to time.

**ARTICLE III**

Registered Office and Agent

The address of the registered office of the Company in the State of Florida is 1201 Hay Street, Tallahassee, Florida 32301. The name of the registered agent at such address is Corporation Service Company.

**ARTICLE IV**

Manager-Managed Company

The Company shall be manager-managed for the purposes of Section 605.0407 and other relevant provisions of the Florida Revised Limited Liability Company Act. The name and address of such Manager is Heathrow Hotel Associates, LLC, 1480 Royal Palm Beach Blvd., Suite A, Royal Palm Beach, Florida 33411.

**ARTICLE V**

Purpose

The Company's business and purpose shall consist solely of the following:

(a) the acquisition and ownership of a Membership Interest in, and the acceptance of and service as the Manager of, Heathrow Hotel Owners, LLC, a Florida limited liability company ("HNO"); and

(b) to engage in such other lawful activities permitted to limited liability companies by the Florida Revised Limited Liability Company Act of the State of Florida as are incidental, necessary or appropriate to the foregoing.

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## ARTICLE VI

Limitation on Authority

Notwithstanding any other provisions of these Articles of Organization ("Articles"), the Company's operating agreement and any other organizational documents of the Company and for so long as any obligations secured by that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of June 16, 2017 (the "Mortgage") (capitalized terms not expressly defined in this Article XIII shall have the meanings ascribed to them in the Mortgage) remain outstanding and not paid in full, the following shall apply:

(a) without the prior written consent of the holder of the Mortgage, in its sole and absolute discretion, the Company have not, and shall have no authority to:

- (i) engage in any business or activity other than those set forth in Article V;
- (ii) own any subsidiary or make any investment in, any Person; or
- (iii) amend Article V or this Article VI or otherwise amend, modify, terminate or fail to comply with the provisions of these Articles, if such amendment, modification, termination or failure to comply would adversely affect the ability of HHO to perform its obligations under the Mortgage, under the Note or under the other Loan Documents; and

(b) without the unanimous consent of the Members and the Independent Director (as defined below), the Manager and the Company have not, and shall have no authority to:

- (i) institute proceedings to be adjudicated bankrupt or insolvent, or consent to the institution or bankruptcy or insolvency proceedings against the Company or HHO, or file a petition seeking or consenting to reorganization or relief under any applicable federal or state law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or HHO or a substantial part of property of the Company or HHO, or make any assignment for the benefit of creditors, declare or effectuate a moratorium on the payment of any obligations, or admit publicly or in writing to its inability to pay its debts generally as they become due, or take company action in furtherance of any such action;

(ii) dissolve, wind up or liquidate, or take any action, or omit to take any action, as a result of which the Company or HHO would be dissolved, wound up or liquidated in whole or in part; or

(iii) merge into or consolidate with any Person or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure.

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## ARTICLE VII

Independent Director

Notwithstanding any other provisions of these Articles of Organization ("Articles"), the Company's operating agreement and any other organizational documents of the Company and for so long as any obligations secured by the Mortgage remain outstanding and not paid in full, the following shall apply:

(a) there shall be at least one duly appointed "independent director" of the Company and the Manager (the "Independent Director") who meets the criteria provided in Section 4.5 of the Mortgage;

(b) the initial Independent Director designated by the Manager on behalf of the Company is Jennifer A. Schwartz; and

(c) (i) the Manager and members of the Company shall not take any action under Article VI (b) unless at the time of such action there shall be at least one (1) Independent Director engaged as provided by the terms of the Mortgage; (ii) any resignation, removal or replacement of any Independent Director shall not be effective without (1) prior written notice to Lender and the Rating Agencies (which such prior written notice must be given on the earlier of five (5) Business Days prior to the applicable resignation, removal or replacement) and (2) evidence that the replacement Independent Director satisfies the applicable terms and conditions of the Mortgage, these Articles and the Company's operating agreement (which such evidence must accompany the aforementioned notice); (iii) to the fullest extent permitted by Applicable Law, and notwithstanding any duty otherwise existing at law or in equity, the Independent Director shall consider only the interests of the Company (including the Company's creditors) in voting or otherwise voting on the matters provided for in the Mortgage, these Articles the Company's operating agreement and in the Company's organizational documents (which such fiduciary duties to the Company and the Company's creditors, in each case, shall be deemed to apply solely to the extent of the economic interests in the Company exclusive of (x) all other interests (including, without limitation, all other interests of the members), (y) the interests of other Affiliates of the members, the Company and Controlling Party and (z) the interests of any group of Affiliates of which the Members, Company or Controlling Party is a part)); (iv) other than as provided in subsection (iii) above, the Independent Director shall not have any fiduciary duties to any members, any directors of the Company or Controlling Party or any other Person; (v) the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing under Applicable Law; and (vi) to the fullest extent permitted by Applicable Law, an Independent Director shall not be liable to the Company, Controlling Party, any member or any other Person for breach of contract or breach of duties (including fiduciary duties), unless the Independent Director acted in bad faith or engaged in willful misconduct.

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## ARTICLE VIII

Separateness Covenants

Notwithstanding any other provisions of these Articles of Organization ("Articles"), the Company's operating agreement and any other organizational documents of the Company and for so long as any obligations secured by the Mortgage remain outstanding and not paid in full, the Company shall, and shall cause HHO to:

(a) preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation;

(b) not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Debt except with respect to trade payables in the ordinary course of its business of owning and operating the Property, provided that such trade payables are paid within sixty (60) days of when incurred and do not exceed 2% of the Loan amount, and are not evidenced by a note;

(c) maintain its records, books of account and bank accounts separate and apart from those of members, principals and affiliates of the Company or HHO, the affiliates of a member, and any other Person;

(d) not commingle its assets with the assets of any of its members, principals, affiliates or any other Person, or 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 member, principal or affiliate of the Company or HHO, or any member, shareholder or general partner, principal or affiliate thereof or any other Person;

(e) not enter into any contract or agreement with any member or affiliate of the Company or HHO, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's length basis with third parties other than any member, principal or affiliate of the Company or HHO;

(f) not make any loans or advances to any Person, including any member, principal or affiliate of the Company or HHO, or any member, shareholder or general partner, principal or affiliate thereof;

(g) conduct business in its own name, and use separate stationery, invoices and checks;

(h) maintain separate financial statements on behalf of the Company and HHO, or if part of a consolidated group, then each will be shown as a separate member of such group;

(i) pay its own debts and liabilities from its own funds and assets as the same shall become due and otherwise not intend to become insolvent;

(j) hold regular meetings, as appropriate to conduct the business of the Company or HHO, and observe all customary limited liability company formalities;

(k) pay the salaries of its own employees and maintain a sufficient number of employees in light of its contemplated business operations;

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(l) not assume, guarantee, pay, become obligated for, or hold itself out to be responsible for the debts or obligations of any other person or entity, or pledge its assets for the benefit of any other person or entity, other than in connection with the Mortgage;

(m) not acquire obligations or securities of its members;

(n) allocate and charge fairly and reasonably any overhead for shared office space or common employees;

(o) not hold itself out to be responsible for the debts of another Person;

(p) hold itself out to the public as a legal entity separate and distinct from any other Person or to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that the Company or HHO is responsible for the debts of any third party (including any member, principal or affiliate of the Company, or any member, shareholder or general partner, principal or affiliate thereof); and

(q) 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.

#### ARTICLE IX

##### Effect of Bankruptcy, Death, Etc. of a Member

To the extent permitted by law, notwithstanding any other provisions of these Articles and for so long as any obligations secured by the Mortgage remain outstanding and not paid in full, the bankruptcy, death, insolvency, dissolution, liquidation, termination, resignation, removal or incapacity of any member, including any member acting as Manager of the Company, shall not cause the termination or dissolution of the Company and the business of the Company shall continue. Upon any such occurrence, the trustee, receiver, executor, administrator, committee, guardian or conservator of such member shall have all the rights of such member for the purpose of settling or managing its estate or property, subject to satisfying the conditions precedent to the admission of such assignee as a substitute member. The transfer by such trustee, receiver, executor, administrator, committee, guardian or conservator of any membership interest of the Company shall be subject to all of the restrictions hereunder to which such transfer would have been subject if such transfer had been made by such bankrupt, deceased, insolvent, dissolved, liquidated, terminated, resigned, removed or incapacitated member.

#### ARTICLE X

##### Intended Third Party Beneficiary

Notwithstanding any provisions of these Articles, the Company's operating agreement and any other organizational documents of the Company and for so long as any obligations secured by the Mortgage remain outstanding and not paid in full, the holder of the Mortgage shall be an intended third party beneficiary of these Articles, the Company's operating agreement and any other organizational documents of the Company.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

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DATED as of the 16 day of June, 2017.

Heathrow Hotel Associates, LLC, as its  
Manager

By: WB Heathrow Hotel Associates,  
LLC, as its Manager

By:   
Steven Fairbanks  
Authorized Signatory

By: RDA Heathrow Hotel Associates, LLC, as its  
Manager

By: RDA Investments, Inc., as its  
Manager

By:   
Steven Fairbanks  
Vice President

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In accordance with Section 605.0203(1)(b) of the Florida Revised Limited Liability Company Act, the execution of this document constitutes an affirmation under the penalties of perjury that the facts stated herein are true. I am aware that any false information submitted in a document to the Florida Department of State constitutes a third degree felony as provided for in Section 817.135 of the Florida Statutes.

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