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ShuffieldLowman

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EXAMINER

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FCLC VERNON HILLS, LLC

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Help

(((H08000006761 3)))

**2007 ARTICLES OF AMENDMENT
TO
ARTICLES OF ORGANIZATION
OF
FCLC VERNON HILLS, LLC
A Florida Limited Liability Company
(Florida Document Number L02000019662)**

FIRST: The date of filing of the articles of organization was August 1, 2002. The articles of organization were subsequently amended and restated on September 6, 2007.

SECOND: Article V of the articles of organization is hereby amended by deleting said article as it presently exists and by substituting the following in its place.

**ARTICLE V
MANAGEMENT**

The Company is to be manager-managed. The number of managers of the Company may be increased or decreased from time to time pursuant to regulations adopted by the Members, but in no event shall the number of managers be less than one (1). The names and addresses of the persons who are to serve as managers until successor managers are elected and shall qualify are as follows:

Katherine A. Christy
300 International Parkway #300
Heathrow, FL 32746

C. Thomas Selby
300 International Parkway #300
Heathrow, FL 32746

THIRD: Article VII of the articles of organization is hereby amended by deleting said article as it presently exists and by substituting the following in its place.

**ARTICLE VII
PURPOSE**

The business and purpose of the Company shall consist solely of the acquisition, ownership, operation and maintenance of the real estate project known as the AmeriSuites Hotel, located at 450 N. Milwaukee Avenue, Vernon Hills, Illinois 60061-1537 (the "Property") and activities incidental thereto. The Company shall have the authority to do all things necessary or convenient to accomplish its purpose or operate its business as described herein.

FOURTH: Article VIII of the articles of organization is hereby amended by deleting said article as it presently exists and by substituting the following in its place.

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(((H08000006761 3)))

ARTICLE VIII POWERS AND DUTIES

Notwithstanding any other provisions of these Articles and so long as any obligations secured by a first priority mortgage, deed of trust or deed to secure debt incurred in connection with any financing of the Property (a "Security Instrument") remain outstanding and not discharged in full, without the consent of all of the Members, a Member shall have no authority on behalf of the Company to:

(i) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than obligations secured by the Security Instrument, except unsecured trade and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Property in such amounts as are normal and reasonable under the circumstances, provided that such debt is not outstanding for more than thirty (30) days and is not evidenced by a note and is paid when due and provided in any event the outstanding principal balance of such debt shall not exceed at any one time one percent (1%) of the outstanding obligations secured by the Security Instrument;

(ii) seek the dissolution or winding up, in whole or in part, of the Company;

(iii) merge into or consolidate with any Person (as defined below) 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;

(iv) file a voluntary petition or otherwise initiate proceedings to have the Company adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Company, or file a petition seeking or consenting to reorganization or relief of the Company as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Company; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Company or of all or any substantial part of the properties and assets of the Company, or make any general assignment for the benefit of creditors of the Company, or admit in writing the inability of the Company to pay its debts generally as they become due or declare or effect a moratorium on the Company debt or take any action in furtherance of any such action; or

(v) amend, modify or alter Articles VII, VIII, IX, X, XI or XII of these Articles.

The term "Person" shall mean any individual, general partnership, limited liability partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, association or foreign trust or business entity.

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- FIFTH:** Article X of the articles of organization is hereby amended by deleting the last sentence of said article.
- SIXTH:** Article XI of the articles of organization is hereby amended by deleting said article as it presently exists and by substituting the following in its place.

**ARTICLE XI
SUBORDINATION OF INDEMNIFICATION PROVISIONS**

Notwithstanding any provision hereof to the contrary, any indemnification claim against the Company arising under these Articles, the Company's Operating Agreement or the laws of the State of Florida shall be fully subordinate to any obligations of the Company arising under the Security Instrument or any other Loan Document (as defined therein), and shall only constitute a claim against the Company to the extent of, and shall be paid by the Company in monthly installments only from, the excess of net operating income for any month over all amounts then due under the Security Instrument and the other Loan Documents.

- SEVENTH:** A new Article XII is hereby added to the articles of organization as follows:

**ARTICLE XII
SEPARATENESS/OPERATIONS MATTERS**

The Company has not and shall not:

- (a) acquire or own any material asset other than (i) the Property, and (ii) such incidental personal property as may be necessary for the operation of the Property;
- (b) fail to preserve its existence as an entity duly organized, validly existing and in good standing under the laws of Florida, or without the prior written consent of the holder of the Security Instrument, amend, modify, terminate or fail to comply with the provisions of these Articles or the Company's Operating Agreement;
- (c) own any subsidiary or make any investment in or acquire the obligations or securities of any other Person without the consent of the holder of the Security Instrument;
- (d) commingle its assets with the assets of its Manager, its Member or any other of its principals, affiliates, or of any other Person or transfer any assets to any such Person other than distributions on account of equity interests in the Company permitted by the Security Instrument and properly accounted for;

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(e) allow any Person to pay its debts and liabilities (except for a Guarantor or Indemnitor (as such terms are defined in the Security Instrument)) or fail to pay its debts and liabilities solely from its own assets;

(f) fail to maintain its records, books of account and bank accounts separate and apart from those of the Members, principals and affiliates of the Company, the affiliates of a Member of the Company and any other Person or fail to prepare and maintain its own financial statements in accordance with generally accepted accounting principles and susceptible to audit, or if such financial statements are consolidated, fail to cause such financial statements to contain footnotes disclosing that the Property is actually owned by the Company;

(g) enter into any contract or agreement with any Member, principal, or affiliate of the Company or any guarantor of all or a portion of the obligations secured by the Security Instrument or any Member, principal or affiliate thereof, 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 any Member, principal or affiliate of the Company, as the case may be, any guarantor or any partner, member, principal or affiliate thereof;

(h) fail to correct any known misunderstandings regarding the separate identity of the Company;

(i) hold itself out to be responsible or pledge its assets or credit worthiness for the debts of another Person or allow any Person to hold itself out to be responsible or pledge its assets or credit worthiness for the debts of the Company (except for a Guarantor or Indemnitor);

(j) make any loans or advances to any Person, including any Member, principal or affiliate of the Company, or any partner, member, principal or affiliate thereof;

(k) fail to file its own tax returns or to use separate contracts, purchase orders, stationery, invoices and checks;

(l) fail either to 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 is responsible for the debts of any third party (including any Manager, Member, principal or affiliate of the Company or any partner, member, principal or affiliate thereof);

(m) fail to allocate fairly and reasonably among the Company and any third party (including, without limitation, any guarantor) any overhead for common employees, shared office space or other overhead and administrative expenses;

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(n) allow any Person to pay the salaries of its own employees or fail to maintain a sufficient number of employees for its contemplated business operations;

(o) share any common logo with or hold itself out as or be considered as a department or division of (i) any principal, Member Manager or affiliate of the Company, (ii) any affiliate of a Member or affiliate of the Company, or (iii) any other Person or allow any Person to identify the Company as a department or division of that Person; or

(p) conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of the Company or the creditors of any other Person.

Dated this 31 day of December, 2007.

By:


Katherine A. Christy, Manager

By:


C. Thomas Selby, Manager

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