

# **L14000133228** 9/24/2014 11:56:52 From: To: 8500176383 Page 1 of 10 )  
Division of Corporations

Florida Department of State  
Division of Corporations  
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JUPITER AA HOTEL LLC

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**COVER LETTER**

**TO: Registration Section  
Division of Corporations**

**SUBJECT: JUPITER AA HOTEL LLC**  
Name of Limited Liability Company

The enclosed Articles of Amendment and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to the following:

**GEORGE A. CONTIS, ESQ.**

Name of Person

**Giarmarco, Mullins & Horton, P.C.**

Firm/Company

**101 W. Big Beaver Road, 10th Floor**

Address

**Troy, MI 48084**

City/State and Zip Code

**gcontis@gmhlaw.com**

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

**George A. Contis**

Name of Person

at **248** **457-7000**

Area Code

Daytime Telephone Number

Enclosed is a check for the following amount:

☐ \$25.00 Filing Fee

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Certificate of Status

☐ \$55.00 Filing Fee &  
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(additional copy is enclosed)

☒ \$60.00 Filing Fee,  
Certificate of Status &  
Certified Copy  
(additional copy is enclosed)

**MAILING ADDRESS:**  
Registration Section  
Division of Corporations  
P.O. Box 6327  
Tallahassee, FL 32314

**STREET/COURIER ADDRESS:**  
Registration Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, FL 32301

ARTICLES OF AMENDMENT  
TO  
ARTICLES OF ORGANIZATION  
OF

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SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

JUPITER AA HOTEL LLC

(Name of the Limited Liability Company as it now appears on our records.)  
(A Florida Limited Liability Company)

The Articles of Organization for this Limited Liability Company were filed on August 25, 2014 and assigned  
Florida document number 14000133228.

This amendment is submitted to amend the following:

A. If amending name, enter the new name of the limited liability company here:

The new name must be distinguishable and end with the words "Limited Liability Company," the designation "LLC" or the abbreviation "LLC."

Enter new principal offices address, if applicable:

(Principal office address MUST BE A STREET ADDRESS)

Enter new mailing address, if applicable:

(Mailing address MAY BE A POST OFFICE BOX)

B. If amending the registered agent and/or registered office address on our records, enter the name of the new registered agent and/or the new registered office address here:

Name of New Registered Agent:

New Registered Office Address:

Enter Florida street address

City, Florida Zip Code

New Registered Agent's Signature, if changing Registered Agent:

*I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent as provided for in Chapter 605, F.S. Or, if this document is being filed to merely reflect a change in the registered office address, I hereby confirm that the limited liability company has been notified in writing of this change.*

If Changing Registered Agent, Signature of New Registered Agent

If amending the Managers or Authorized Member on our records, enter the title, name, and address of each Manager or Authorized Member being added or removed from our records:

MGR = Manager

AMBR = Authorized Member

<u>Title</u>	<u>Name</u>	<u>Address</u>	<u>Type of Action</u>
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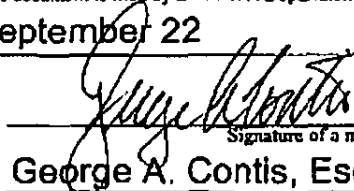
**D. If amending any other information, enter change(s) here: (Attach additional sheets, if necessary.)**

Amending the Articles to add SPE provisions as a new Article VI (which are attached hereto)

**E. Effective date, if other than the date of filing: \_\_\_\_\_ (optional)**

(The effective date must be specific, cannot be prior to date of receipt or filed date and cannot be more than 90 days after the date this document is filed by the Florida Department of State)

Dated September 22 2014



Signature of a member or authorized representative of a member

George A. Contis, Esq. / Authorized Representative

Typed or printed name of signer

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## ARTICLE VI

### SINGLE PURPOSE ENTITY PROVISIONS

ALL DEFINED TERMS SET FORTH IN THIS ARTICLE VI SHALL HAVE THE DEFINITIONS ASCRIBED TO THEM IN THAT CERTAIN LOAN AGREEMENT BETWEEN THE COMPANY AS BORROWER AND LADDER CAPITAL FINANCE LLC, A DELAWARE LIMITED LIABILITY COMPANY AND AS LENDER (THE "LOAN AGREEMENT").

(a) Company has not owned, does not own and will not own any asset or property other than (i) the Property and (ii) incidental personal property necessary for the ownership, management or operation of the Property.

(b) Company has not engaged, does not engage, and will not engage in any business other than the ownership, management and operation of the Property and Company will conduct and operate its business as presently conducted and operated.

(c) Other than the Management Agreement, Company has not entered and is not a party to and will not enter into or be a party to any contract or agreement with any Affiliate of Company, any constituent party of Company or any Affiliate of any constituent party, except in the ordinary course of business and on terms and conditions that are disclosed to Lender in advance and that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

(d) Company has not incurred and will not incur any Indebtedness other than (i) the Debt and (ii) unsecured trade payables and operational debt not evidenced by a note and in an aggregate amount not exceeding two percent (2%) of the original principal amount of the Loan at any one time; provided that any Indebtedness incurred pursuant to subclause (ii) shall be (A) not more than sixty (60) days past due and (B) incurred in the ordinary course of business (the Indebtedness described in the foregoing clauses (i) and (ii) is referred to herein, collectively, as "Permitted Indebtedness"). No Indebtedness other than the Debt may be secured (subordinate or pari passu) by the Property.

(e) Company has not made and will not make any loans or advances to any Person (including any Affiliate or constituent party), and has not acquired and shall not acquire obligations or securities of its Affiliates.

(f) Company is and intends to remain solvent and Company has paid and will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from Net Operating Income and available Reserve Funds, as the same shall become due; provided, however, that the foregoing shall not require any direct or indirect member, partner or shareholder of Company to make any additional capital contributions to Company.

(g) Company has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Company will not, nor will Company permit any SPC Party to, (i) terminate or fail to comply with the provisions of its organizational documents, or (ii) unless (A) Lender has consented and (B) following a

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Securitization of the Loan, the Rating Agencies have issued a Rating Agency Confirmation in connection therewith, amend, modify or otherwise change its partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents.

(h) Company has maintained and will maintain all of its accounts, books, records, financial statements and bank accounts separate from those of its Affiliates and any other Person. Company's assets have not been and will not be listed as assets on the financial statement of any other Person; provided, however, that Company's assets may be included in a consolidated financial statement of its Affiliates if (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Company and such Affiliates and to indicate that Company's assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person, and (ii) such assets shall be listed on Company's own separate balance sheet. Company has and will file its own tax returns (to the extent Company is required to file any such tax returns) and will not file a consolidated federal income tax return with any other Person. Company has maintained and shall maintain its books, records, resolutions and agreements as official records.

(i) Company has been and will be, and has held and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate of Company or any constituent party of Company), has corrected and shall correct any known misunderstanding regarding its status as a separate entity, has conducted and shall conduct business in its own name, has not identified and shall not identify itself or any of its Affiliates as a division or part of the other, and has maintained and shall maintain and utilize separate stationery, invoices and checks bearing its own name.

(j) Company has maintained and intends to 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; provided, however, that the foregoing shall not require any direct or indirect member, partner or shareholder of Company to make any additional capital contributions to Company.

(k) Neither Company nor any constituent party has sought or will seek or effect the liquidation, dissolution, winding up, consolidation or merger, in whole or in part, of Company.

(l) Company has not commingled and will not commingle the funds and other assets of Company with those of any Affiliate or constituent party or any other Person, and has held and will hold all of its assets in its own name.

(m) Company has maintained and will 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 Affiliate or constituent party or any other Person.

(n) Company has not assumed or guaranteed or become obligated for the debts of any other Person and has not held itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other Person, and Company will not assume or guarantee or

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become obligated for the debts of any other Person and does not and will not hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other Person.

(o) Company and each SPC Party shall conduct their respective business so that the assumptions made with respect to Company and each SPC Party in any Insolvency Opinion delivered in connection with the Loan shall be true and correct in all respects and, to the extent that an Insolvency Opinion has previously been delivered in connection with the Loan, Company and each SPC Party have at all times conducted their respective business so that the assumptions made with respect to Company and each SPC Party in such Insolvency Opinion shall be true and correct in all respects. In connection with the foregoing, Company hereby covenants and agrees that it and each SPC Party will comply with or cause the compliance with, (i) all of the facts and assumptions (whether regarding Company or any SPC Party) set forth in any Insolvency Opinion delivered in connection with the Loan, (ii) all the representations, warranties and covenants in Sections 3.1.24 and 4.1.15 of the Loan Agreement and this Article, and (iii) all the organizational documents of Company and any SPC Party.

(p) Company has not permitted and will not permit any Affiliate or constituent party independent access to its bank accounts except in strict accordance with the customary operation of the Property.

(q) Company has paid and shall pay the salaries of its own employees (if any) from its own funds and has and shall maintain a sufficient number of employees (if any) in light of its contemplated business operations; provided, however, that the foregoing shall not require any direct or indirect member, partner or shareholder of Company to make any additional capital contributions to Company.

(r) Company has compensated and shall compensate each of its consultants and agents from its funds for services provided to it and pay from its own assets all obligations of any kind incurred; provided, however, that the foregoing shall not require any direct or indirect member, partner or shareholder of Company to make any additional capital contributions to Company.

(s) Company has not, and without the unanimous consent of all of its members, partners, directors or managers (including each Independent Director) will not, take any action that might reasonably be expected to cause Company to become insolvent.

(t) Company has allocated and will allocate fairly and reasonably any shared expenses, including shared office space.

(u) Except in connection with the Loan or any prior mortgage financing that has been fully paid and discharged in full prior to the date hereof, Company has not pledged and will not pledge its assets for the benefit of any other Person.

(v) Company either (i) has no, and will have no, obligation to indemnify its officers, directors, managers, members, shareholders or partners, as the case may be, or (ii) if it has any such obligation, such obligation is fully subordinated to the Debt and will not constitute a claim against Company if cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation.

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(w) Company will consider the interests of Company's creditors in connection with all limited liability company or limited partnership actions.

(x) Except as provided in the Loan Documents, Company has not and will not have any of its obligations guaranteed by any Affiliate.

(y) The Company shall have (and Company shall at all times cause there to be) at least one member of Company (each, an "SPC Party") which shall be a corporation whose sole asset is its interest in Company, and each such SPC Party:

(i) will cause Company to comply with each of the representations, warranties and covenants contained in Sections 3.1.24 and 4.1.15 of the Loan Agreement and this Article;

(ii) will at all times comply with each of the representations, warranties and covenants contained in Sections 3.1.24 and 4.1.15 of the Loan Agreement and this Article (other than subsections (a), (b), (d), and (aa) of this Article) as if such representation, warranty or covenant was made directly by such SPC Party;

(iii) has not owned, does not own and will not own any asset or property other than (A) its interest in Company and (B) incidental personal property necessary for the ownership of such interest;

(iv) has not and will not engage in any business or activity other than owning an interest in Company and acting as the member of Company; and

(v) has not and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation) other than unsecured trade payables incurred in the ordinary course of business related to the ownership of an interest in Company that (A) do not exceed at any one time \$10,000.00, and (B) are paid within thirty (30) days after the date incurred.

Upon the withdrawal or the disassociation of an SPC Party from Company, Company shall immediately appoint a new SPC Party whose articles of incorporation and by-laws are substantially similar to those of such SPC Party and, if an Insolvency Opinion has previously been delivered in connection with the Loan, shall deliver a new Insolvency Opinion.

(z) As long as any portion of the Obligations remain outstanding, Company will not:

(i) dissolve, merge, liquidate or consolidate, except as provided in clause (aa)(i) below;

(ii) except in connection with a sale or other transfer permitted under the Loan Documents, sell all or substantially all of its assets;

(iii) amend its organizational documents with respect to the matters set forth in this Article, without (A) the prior written consent of Lender, (B) the affirmative vote of

each SPC Party and (C) the affirmative vote of each Independent Director of each SPC Party; or

(iv) without the affirmative vote of each of its members or partners, and without the affirmative vote of each Independent Director of each SPC Party, take any Material Action with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest.

(aa) As long as any portion of the Obligations remain outstanding,

(i) Company will dissolve only upon the bankruptcy of each SPC Party;

(ii) the vote of a majority-in-interest of the remaining members or partners of Company is sufficient to continue the life of the limited liability company or partnership in the event of such bankruptcy of the SPC Party; and

(iii) if the vote of a majority-in-interest of the remaining members or partners of Company to continue the life of the limited liability company or limited partnership following the bankruptcy of the SPC Party is not obtained, Company may not liquidate the Property without the prior written consent of Lender and the Rating Agencies for as long as the Loan is outstanding.

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