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Division of Corporations

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## FLORIDA PROFIT/NON PROFIT CORPORATION

### Smart Brickell Lodging II Condominium Association, I

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**ARTICLES OF INCORPORATION  
FOR  
SMART BRICKELL LODGING II CONDOMINIUM ASSOCIATION, INC.**

The undersigned Incorporator, for the purpose of forming a corporation not for profit pursuant to the laws of the State of Florida, hereby adopts the following Articles of Incorporation:

**ARTICLE 1.  
NAME**

The name of the corporation shall be **SMART BRICKELL LODGING II CONDOMINIUM ASSOCIATION, INC.** For convenience, the corporation shall be referred to in this instrument as the "Association," these Articles of Incorporation as the "Articles," and the By-Laws of the Association as the "By-Laws".

**ARTICLE 2.  
OFFICE**

The principal office and mailing address of the Association shall be at 175 SW 7 Street, Suite 2201, Miami, FL 33130, or at such other place as may be subsequently designated by the Board of Directors. All books and records of the Association shall be kept at its principal office or at such other place as may be permitted by the Act.

**ARTICLE 3.  
PURPOSE**

The purpose for which the Association is organized is to provide an entity pursuant to the Act for the operation of that certain condominium located in Miami-Dade County, Florida, known as **SMART BRICKELL LODGING II CONDOMINIUM** (the "Condominium").

**ARTICLE 4.  
DEFINITIONS**

The terms used in these Articles shall have the same definitions and meanings as those set forth in the Declaration of Condominium recorded or to be recorded in the public records of Miami-Dade County, Florida, establishing the Condominium, unless herein provided to the contrary, or unless the context otherwise requires.

**ARTICLE 5.  
POWERS**

The powers of the Association shall include and be governed by the following:

5.1 General. The Association shall have all of the common law and statutory powers of a corporation not for profit under the Laws of Florida, except as expressly limited or restricted by the terms of these Articles, the Declaration, the By-Laws or the Act.

5.2 Enumeration. The Association shall have all of the powers and duties set forth in the Act, except as limited by these Articles, the By-Laws and the Declaration (to the extent that they are not in conflict with the Act), and all of the powers and duties reasonably necessary to

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operate the Condominium pursuant to the Declaration and as more particularly described in the By-Laws, as they may be amended from time to time, including, but not limited to, the following:

- (a) The irrevocable right to have access to each Unit, from time to time during reasonable hours as may be necessary for pest control or other purposes and for the maintenance, repair or replacement of any Common Elements, or any portions of a Unit to be maintained by the Association, or at any time, and by force, if necessary, to prevent damage or to make emergency repairs to the Common Elements, the Association Property or to a Unit or Units, including, without limitation (but without obligation or duty), to install and/or close exterior storm shutters in the event of the issuance of a storm watch or storm warning and/or to maintain, repair, replace and/or operate Life Safety Systems.
- (b) To make and collect Assessments, Charges and other levies against members as Unit Owners (whether or not such sums are due and payable to the Association), and to use the proceeds thereof in the exercise of its powers and duties.
- (c) To assume all of Developer's and/or its affiliates' responsibilities to the City, the County, and their governmental and quasi-governmental subdivisions and similar entities of any kind with respect to the Condominium Property (including, without limitation, any and all obligations imposed by any permits or approvals issued by the City and/or County, as same may be amended, modified or interpreted from time to time) and, in either such instance, to indemnify and hold Developer and its affiliates harmless with respect thereto in the event of the Association's failure to fulfill those responsibilities.
- (d) To buy, accept, own, operate, lease, sell, trade and mortgage both real and personal property in accordance with the provisions of the Declaration.
- (e) To maintain, repair, replace, reconstruct, add to and operate the Condominium Property and/or Association Property, and other property acquired or leased by the Association.
- (f) To purchase insurance covering the Condominium Property and Association Property and insurance for the protection of the Association, its officers, directors and Unit Owners.
- (g) To make and amend reasonable rules and regulations for the maintenance, conservation and use of the Condominium Property and Association Property and for the health, comfort, safety and welfare of the Unit Owners.
- (h) To approve or disapprove the leasing, transfer, ownership and possession of Units as may be provided by the Declaration.
- (i) To approve or disapprove the merger, consolidation or other combination with other condominiums.
- (j) To enforce by legal means the provisions of the Act, the Declaration, these Articles, the By-Laws, and the rules and regulations for the use of the Condominium Property and the Association Property.

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(k) To contract for the management and maintenance of the Condominium Property and/or Association Property, or any portion thereof, and to authorize a management agent (which may be an affiliate of the Developer) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Elements and Association Property with such funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Act, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.

(l) To employ personnel to perform the services required for the proper operation of the Condominium and the Association Property.

(m) To execute all documents or consents, on behalf of all Unit Owners (and their mortgagees), required by all governmental and/or quasi-governmental agencies in connection with land use and development matters (including, without limitation, plats, waivers of plat, unities of title, covenants in lieu thereof, etc.), and in that regard, each Owner, by acceptance of the deed to such Owner's Unit, appoints and designates the Board of Directors of the Association as such Owner's agent and attorney-in-fact to execute, any and all such documents or consents.

(n) To act as the exclusive agent of the Unit Owners in the manner provided in the Master Covenants with respect to the affairs of the Shared Facilities, including, without limitation, the power to collect assessments and other amounts due under the Master Covenants from Unit Owners, but only if and to the extent requested by the applicable Shared Facilities Owner(s), provided, however, that any assessments so collected shall not be deemed Assessments or Common Expenses under the Declaration, and the power to grant consents and approvals under the Master Covenants, with said consents and approvals being conclusively binding upon the Unit Owners, and to execute joinders and consents in connection therewith.

In the event of conflict among the powers and duties of the Condominium Association or the terms and provisions of the Declaration and the Master Covenants or otherwise, the Master Covenants shall take precedence over the Declaration, and the Declaration shall take precedence over the Articles, By-Laws and the rules and regulations; the Articles shall take precedence over the By-Laws and the rules and regulations; and the By-Laws shall take precedence over the rules and regulations, all as amended from time to time; provided, however, that nothing set forth in the Master Covenants shall conflict with the powers and duties of the Condominium Association or the rights of the Unit Owners as provided in the Act. Notwithstanding anything in the Declaration or the Master Covenants to the contrary, the Condominium Association shall at all times be the entity having ultimate control over the Condominium, consistent with the Act

5.3 Association Property. All funds and the title to all properties acquired by the Association and their proceeds shall be held for the benefit and use of the members in accordance with the provisions of the Declaration, these Articles and the By-Laws.

5.4 Distribution of Income; Dissolution. The Association shall not pay a dividend to its members and shall make no distribution of income to its members, directors or officers, and upon dissolution, all assets of the Association shall be transferred only to another non-profit corporation

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or a public agency, or the Act, or as otherwise authorized by the Florida Not For Profit Corporation Act (Chapter 617, Florida Statutes).

5.5 Limitation. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions hereof and of the Declaration, the By-Laws and the Act, provided that in the event of conflict, the provisions of the Act shall control over those of the Declaration and By-Laws.

#### ARTICLE 6. MEMBERS

6.1 Membership. The members of the Association shall consist of all of the record title owners of Units in the Condominium from time to time, and after termination of the Condominium, shall also consist of those who were members at the time of such termination, and their successors and assigns.

6.2 Assignment. The share of a member in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit for which that share is held.

6.3 Voting. On all matters upon which the membership shall be entitled to vote, there shall be only one vote for each Unit. All votes shall be exercised or cast in the manner provided by the Declaration and By-Laws. Any person or entity owning more than one Unit shall be entitled to cast the aggregate number of votes attributable to all Units owned by such person or entity.

6.4 Meetings. The By-Laws shall provide for an annual meeting of members, and may make provision for regular and special meetings of members other than the annual meeting.

#### ARTICLE 7. TERM OF EXISTENCE

The Association shall have perpetual existence.

#### ARTICLE 8. INCORPORATOR

The name and address of the Incorporator of this Corporation is:

NAME  
Alexander Faria

ADDRESS  
135 San Lorenzo Avenue, Suite 650  
Coral Gables, Florida 33146

#### ARTICLE 9. OFFICERS

The affairs of the Association shall be administered by the officers holding the offices designated in the By-Laws. The officers shall be elected by the Board of Directors of the Association at its first meeting following the annual meeting of the members of the Association and shall serve at the pleasure of the Board of Directors. The By-Laws may provide for the

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removal from office of officers, for filling vacancies and for the duties and qualifications of the officers. The names and addresses of the officers who shall serve until their successors are designated by the Board of Directors are as follows:

President:	
Santiago Vanegas	175 SW 7 Street, Suite 2201 Miami, FL 33130
Vice President:	
Mauricio Behar	175 SW 7 Street, Suite 2201 Miami, FL 33130
Secretary/Treasurer:	
Ileana Alvarado	175 SW 7 Street, Suite 2201 Miami, FL 33130

#### ARTICLE 10. DIRECTORS

10.1 Number and Qualification. The property, business and affairs of the Association shall be managed by a board consisting of the number of directors determined in the manner provided by the By-Laws, but which shall consist of not less than three (3) directors. Directors, except those appointed by the Developer, must be members of the Association.

10.2 Duties and Powers. All of the duties and powers of the Association existing under the Act, the Declaration, these Articles and the By-Laws shall be exercised exclusively by the Board of Directors, its agents, contractors or employees, subject only to approval by Unit Owners when such approval is specifically required.

10.3 Election; Removal. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by and subject to the qualifications set forth in the By-Laws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the By-Laws.

10.4 Term of Developer's Directors. The Developer of the Condominium shall appoint the members of the first Board of Directors and their replacements who shall hold office for the periods described in the By-Laws.

10.5 First Directors. The names and addresses of the members of the first Board of Directors who shall hold office until their successors are elected and have taken office, as provided in the By-Laws, are as follows:

Santiago Vanegas	175 SW 7 Street, Suite 2201 Miami, FL 33130
Mauricio Behar	175 SW 7 Street, Suite 2201 Miami, FL 33130
Ileana Alvarado	175 SW 7 Street, Suite 2201 Miami, FL 33130

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10.6 Standards. A director shall discharge his duties as a director, including any duties as a member of a Committee: in good faith; with the care an ordinary prudent person in a like position would exercise under similar circumstances; and in a manner reasonably believed to be in the best interests of the Association. Unless a director has knowledge concerning a matter in question that makes reliance unwarranted, a director, in discharging his duties, may rely on information, opinions, reports or statements, including financial statements and other data, if prepared or presented by: one or more officers or employees of the Association whom the director reasonably believes to be reasonable and competent in the manners presented; legal counsel, public accountants or other persons as to matters the director reasonably believes are within the persons' professional or expert competence; or a Committee of which the director is not a member if the director reasonably believes the Committee merits confidence. A director is not liable for any action taken as a director, or any failure to take action, if he performed the duties of his office in compliance with the foregoing standards.

#### **ARTICLE 11. INDEMNIFICATION**

11.1 Indemnities. The Association shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the Association) by reason of the fact that he is or was a director, officer, employee or agent (each, an "Indemnitee") of the Association, against liability incurred in connection with such proceeding, including any appeal thereof, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

11.2 Indemnification. The Association shall indemnify any person, who was or is a party to any proceeding by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee, or agent of the Association against expenses and amounts paid in settlement not exceeding, in the judgment of the Board of Directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association, except that no indemnification shall be made under this section in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

11.3 Indemnification for Expenses. To the extent that a director, officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any proceeding referred to in Section 11.1 or Section 11.2, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses actually and reasonably incurred by him in connection therewith.

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11.4 Determination of Applicability. Any indemnification under Section 11.1 or Section 11.2, unless pursuant to a determination by a court, shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in Section 11.1 or Section 11.2. Such determination shall be made:

(a) By the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such proceeding;

(b) If such a quorum is not obtainable or, even if obtainable, by majority vote of a Committee duly designated by the Board of Directors (in which directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding;

(c) By independent legal counsel:

1. selected by the Board of Directors prescribed in Section 11.4(a) or the Committee prescribed in Section 11.4(b); or

2. if a quorum of the Board of Directors cannot be obtained for Section 11.4(a) and the Committee cannot be designated under Section 11.4(b), selected by majority vote of the full Board of Directors (in which directors who are parties may participate); or

(d) By a majority of the voting interests of the members of the Association who were not parties to such proceeding.

11.5 Determination Regarding Expenses. Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible. However, if the determination of permissibility is made by independent legal counsel, the persons specified by Section 11.4(c) shall evaluate the reasonableness of expenses and may authorize indemnification.

11.6 Advancing Expenses. Expenses incurred by an officer or director in defending a civil or criminal proceeding may be paid by the Association in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if he is ultimately found not to be entitled to indemnification by the Association pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the Board of Directors deems appropriate.

11.7 Exclusivity; Exclusions. The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and the Association may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any director, officer, employee, or agent if a judgment or other final adjudication establishes that his actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

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(a) A violation of the criminal law, unless the director, officer, employee, or agent had reasonable cause to believe his conduct was lawful or had no reasonable cause to believe his conduct was unlawful;

(b) A transaction from which the director, officer, employee, or agent derived an improper personal benefit; or

(c) Willful misconduct or a conscious disregard for the best interests of the Association in a proceeding by or in the right of the Association to procure a judgment in its favor or in a proceeding by or in the right of the members of the Association.

11.8 Continuing Effect. Indemnification and advancement of expenses as provided in this section shall continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless otherwise provided when authorized or ratified.

11.9 Application to Court. Notwithstanding the failure of the Association to provide indemnification, and despite any contrary determination of the Board of Directors or of the members in the specific case, a director, officer, committee member, employee, or agent of the Association who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that:

(a) The director, officer, committee member, employee, or agent is entitled to mandatory indemnification under Section 11.3, in which case the court shall also order the Association to pay the director reasonable expenses incurred in obtaining court-ordered indemnification or advancement of expenses;

(b) The director, officer, committee member, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the Association of its power pursuant to Section 11.7; or

(c) The director, officer, committee member, employee or agent is fairly and reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether such person met the standard of conduct set forth in Section 11.1, Section 11.2 or Section 11.7, unless (i) a court of competent jurisdiction determines, after all available appeals have been exhausted or not pursued by the proposed indemnitee, that he did not act in good faith or acted in a manner he reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe his conduct was unlawful, and (ii) such court further specifically determines that indemnification should be denied. The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or did act in a manner which he reasonably believed to be not in, or opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, that he had reasonable cause to believe that his conduct was unlawful.

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11.10 Definitions. For purposes of this Article, the term "expenses" shall be deemed to include attorneys' fees, including those for any appeals; the term "liability" shall be deemed to include obligations to pay a judgment, settlement, penalty, fine, and expenses actually and reasonably incurred with respect to a proceeding; the term "proceeding" shall be deemed to include any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal, administrative or investigative, and whether formal or informal; and the term "agent" shall be deemed to include a volunteer; the term "serving at the request of the Association" shall be deemed to include any service as a director, officer, employee or agent of the Association that imposes duties on such persons.

11.11 Amendment. Anything to the contrary herein notwithstanding, no amendment to the provisions of this Article shall be applicable as to any party eligible for indemnification hereunder who has not given his prior written consent to such amendment.

## ARTICLE 12. BY-LAWS

The first By-Laws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded in the manner provided in the By-Laws and the Declaration.

## ARTICLE 13. AMENDMENTS

Amendments to these Articles shall be proposed and adopted in the following manner:

13.1 Notice. Notice of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered and shall be otherwise given in the time and manner provided in the Act. Such notice shall contain the proposed amendment or a summary of the changes to be effected thereby.

13.2 Adoption. Amendments shall be proposed and adopted in the manner provided in Chapter 617, Florida Statutes and in the Act (the latter to control over the former to the extent provided for in the Act).

13.3 Limitation. No amendment shall make any changes in the qualifications for membership, nor in the voting rights or property rights of members, nor any changes in Sections 5.3, 5.4 or 5.5 or the Article entitled "Powers," without the approval in writing of all members and the joinder of all record owners of mortgages upon Units. No amendment shall be made that is in conflict with the Act, the Declaration or the By-Laws, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of or reserved to the Developer and/or Institutional First Mortgagees, unless the Developer and/or the Institutional First Mortgagees, as applicable, shall join in the execution of the amendment. No amendment to this section shall be effective.

13.4 Developer Amendments. To the extent lawful, the Developer may amend these Articles consistent with the provisions of the Declaration allowing certain amendments to be effected by the Developer alone.

13.5 Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State

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shall be recorded in the public records of Miami-Dade County, Florida with an identification on the first page thereof of the book and page of said public records where the Declaration was recorded which contains, as an exhibit, the initial recording of these Articles.

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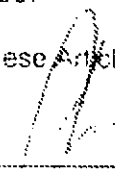
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**ARTICLE 14.**  
**INITIAL REGISTERED OFFICE:**

**ADDRESS AND NAME OF REGISTERED AGENT**

The street address of the initial registered office of this corporation is 135 San Lorenzo Avenue, Suite 850, Coral Gables, Florida 33146 and the name of the initial registered agent of this corporation at that address is FL Corporate & Tax Services, LLC.

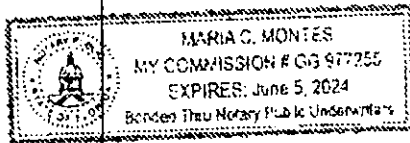
IN WITNESS WHEREOF, the Incorporator has executed these Articles as of this 22<sup>nd</sup> day of December, 2022.

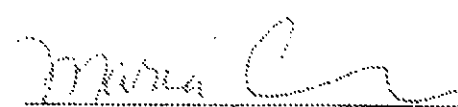
  
 \_\_\_\_\_  
 Alexander Faria, Incorporator

STATE OF FLORIDA                     )  
   )ss:  
 COUNTY OF MIAMI-DADE            )

The foregoing instrument was acknowledged before me on 22<sup>nd</sup> day of December, 2022, by Alexander Faria, who is personally known to me.

[Seal]



  
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 Print: **MARIA C. MONTES**  
 Notary Public.  
 State of Florida at Large

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CERTIFICATE DESIGNATING PLACE OF BUSINESS OR DOMICILE  
FOR THE SERVICE OF PROCESS WITHIN FLORIDA, NAMING  
AGENT UPON WHOM PROCESS MAY BE SERVED

In compliance with Section 48.091, Florida Statutes, the following is submitted:

SMART BRICKELL LODGING II CONDOMINIUM ASSOCIATION, INC., desiring to organize or qualify under the laws of the State of Florida, with its principal place of business at the County of Miami-Dade, State of Florida, has named FL Corporate & Tax Services, LLC, located at 135 San Lorenzo Avenue, Suite 850, Coral Gables, Florida 33146, as its agent to accept service of process within Florida.

\_\_\_\_\_  
Alexander Faria, Incorporator

Dated: 22 day of December, 2022

Having been named to accept service of process for the above stated corporation, at the place designated in this Certificate, I hereby agree to act in this capacity, and I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties.

FL Corporate & Tax Services, LLC, a Florida  
limited liability company

By: \_\_\_\_\_  
Leonardo Caraballo, Vice President

Dated: 22 day of December, 2022

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