

Division of Corporations

Page 1 of 2

# PO1000093456

Florida Department of State  
Division of Corporations  
Public Access System  
Katherine Harris, Secretary of State

## 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.

((H01000101865 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) 205-0381

From:

Account Name : STROOCK & STROOCK & LAVAN  
Account Number : 072100000020  
Phone : (305) 358-9900  
Fax Number : (305) 789-9302

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

01 SEP 24 PM 12:58

RECEIVED

## FLORIDA PROFIT CORPORATION OR P.A.

### AP-ADLER SPV MEMBER I, INC.

Certificate of Status	1
Certified Copy	1
Page Count	05 (10)
Estimated Charge	\$87.50

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

01 SEP 24 AM 10:31

FILED

Fax Audit No. H01000101865 3

ARTICLES OF INCORPORATION  
OF  
AP-ADLER SPV MEMBER I, INC.

THE UNDERSIGNED, incorporator, in order to form a corporation for the purposes herein stated, under and pursuant to the provisions of the Florida Business Corporation Act (the "Act") hereby adopts the following Articles of Incorporation ("Articles"):

FIRST: The name of the Corporation is "AP-Adler SPV Member I, Inc."

SECOND: The principal office address and mailing address of the Corporation is 1400 N.W. 107th Avenue, Miami, Florida 33172-2704. The street address of the initial registered office of the Corporation is 1400 N.W. 107th Avenue, Miami, Florida 33172-2704, and the registered agent at the address is Joel Levy.

THIRD: The purpose of the Corporation shall be limited to serving as the managing member of Tampa Tri-County FlexxSpace LLC, a Florida limited liability company, Tamiami FlexSpace LLC, a Florida limited liability company, and Kennedy-Edgewater FlexSpace LLC, a Florida limited liability company, the general partners of Tampa Tri-County FlexxSpace, Ltd., a Florida limited partnership, Tamiami FlexSpace, Ltd., a Florida limited partnership, and Kennedy-Edgewater FlexSpace, Ltd., a Florida limited partnership, respectively (the "Property Owner"). The Corporation shall be prohibited from incurring indebtedness of any kind except for, in its capacity as managing member of the general partner of the Property Owner, the mortgage loan and other indebtedness (the "Indebtedness") incurred in favor of Lehman Brothers Bank, FSB and its successors and assigns ("Lender") with respect to the Indebtedness and trade payables incurred in the ordinary course of business.

FOURTH: The total number of shares which the Corporation shall have authority to issue is 100 shares of Common Stock, par value \$0.01 per share.

FIFTH: The name and mailing address of the incorporator is:

Michael A. Furshman, Esq.  
Stroock & Stroock & Lavan LLP  
First Union Financial Center, 33rd Floor  
200 South Biscayne Boulevard  
Miami, Florida 33131-2385

SIXTH: The Board of Directors is expressly authorized to adopt, amend, or repeal the By-Laws of the Corporation upon the conditions set forth in the By-Laws.

Prepared by:  
Michael A. Furshman, Esq.  
Stroock & Stroock & Lavan LLP  
First Union Financial Center, 33rd Floor  
200 South Biscayne Boulevard  
Miami, Florida 33131-2385  
Florida Bar No. 0112976

FILED  
01 SEP 24 AM 10:31  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Fax Audit No. H01000101865 3

SEVENTH: Elections of directors need not be by written ballot unless the By-Laws of the Corporation shall otherwise provide.

EIGHTH: The Corporation shall, to the fullest extent permitted by the provisions of Section 607.0850 of the Florida Statutes, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all expenses, liabilities, or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any By-law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as 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 person. Any indemnity furnished by the Corporation to any exculpated party described herein shall be subject, and subordinate, to the Loan and the terms of the Loan Documents.

NINTH: The following provisions regulate the internal affairs of the Corporation:

1. A unanimous vote of the Board of Directors, including the Independent Director, is required to take or cause the Property Owner to take any of the following actions:

- (a) causing the Corporation or the Property Owner to become insolvent;
- (b) commencing any case, proceeding or other action on behalf of the Corporation or the Property Owner under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors;
- (c) instituting proceedings to have the Corporation or the Property Owner adjudicated as bankrupt or insolvent;
- (d) consenting to the institution of bankruptcy or insolvency proceedings against the Corporation or the Property Owner;
- (e) filing a petition or consent to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief on behalf of the Corporation or the Property Owner of its debts under any federal or state law relating to bankruptcy;
- (f) seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Corporation or a substantial portion of the properties of the Corporation or the Property Owner;
- (g) making any assignment for the benefit of the Corporation's or the Property Owner's creditors; or

Fax Audit No. H01000101865 3

- (h) taking any action or causing the Corporation or the Property Owner to take any action in furtherance of any of the foregoing;
2. For so long as the Indebtedness is outstanding, the Corporation shall not:
- (a) amend the Certificate of Incorporation;
  - (b) engage in any business activity other than as set forth in Article THIRD;
  - (c) withdraw as a managing member of the general partner of the Property Owner;
  - (d) dissolve, liquidate, consolidate, merge, or sell all or substantially all of the Corporation's assets or cause the Property Owner to dissolve, liquidate, consolidate, merge, or sell all or substantially all of its assets; or
  - (e) transfer its interest or a portion thereof in the Property Owner, except as expressly permitted under the loan documents executed in connection with the Indebtedness.
3. Except as otherwise provided for in the loan documents with respect to the Indebtedness, the Corporation shall, and the Corporation shall require the Property Owner to:
- (a) not commingle its assets with those of any other entity and hold its assets in its own name;
  - (b) conduct its own business in its own name;
  - (c) maintain bank accounts, books, records, accounts and financial statements separate from any other entity;
  - (d) maintain its books, records, resolutions and agreements as official records and separate from any other entity;
  - (e) pay its own liabilities out of its own funds;
  - (f) maintain adequate capital in light of contemplated business operations;
  - (g) observe all corporate or other organizational formalities;
  - (h) maintain an arm's length relationship with its affiliates;
  - (i) pay the salaries of its own employees and maintain a sufficient number of employees in light of contemplated business operations;
  - (j) not guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of others;
  - (k) not acquire obligations or securities of affiliates or shareholders;

Fax Audit No. H01000101865 3

- (l) not make loans to any other person or entity;
- (m) allocate fairly and reasonably any overhead for shared office space;
- (n) use separate stationery, invoices, and checks;
- (o) not pledge its assets for the benefit of any other entity;
- (p) hold itself out as a separate entity and correct any known misunderstanding regarding its separate identity; and
- (q) not identify itself or any of its affiliates as a division or part of the other.

4. The Board of Directors is to consider the interests of the Corporation's creditors and the Property Owner's creditors in connection with all corporate actions.

TENTH: For so long as the Indebtedness is outstanding, the Board of Directors of the Corporation shall include one (1) Independent Director. An "Independent Director" shall mean a person who is not and has not within the past five (5) years been, (i) an officer, director, employee, partner, member, beneficial-interest holder or stockholder of the Corporation or the Property Owner or of any partner or member of the Property Owner, or any affiliate of any of the foregoing; (ii) a lessee under any lease or supplier of the Property Owner or any affiliate thereof (other than a supplier that does not derive more than 10% of its revenues from its activities with the Property Owner or any affiliate thereof, or (iii) a spouse, parent, sibling, or child of any person described in (i) or (ii) above provided, however, that a person shall not be deemed to be a director of an affiliate solely by reason of such person being a director of a single-purpose entity. For the purpose of this definition alone, affiliate means any person or entity which is controlled by, or under common control with, any person or entity described in clause (i) above; provided that the terms "control" and "controlled by" shall have the meanings assigned to them in Rule 405 under the Securities Act of 1933. The initial Board of Directors shall be composed of Michael M. Adler, Mark A. Ferrucci (Independent Director) and William A. Scully

ELEVENTH: Any and all Corporation obligations to indemnify its directors and officers shall not constitute a claim against the Corporation, as long as the Loan is outstanding.

IN WITNESS WHEREOF, I have hereunto set my hand this 21 day of September, 2001 and I affirm that the foregoing certificate is my act and deed and that the facts stated therein are true.



Incorporator:

09/24/2001 11:21 FAX

STROOCK & STROOCK

009

SEP 21 '01 13:18 FROM:ADLER GROUP

3053924072

T-546 P.02/03 F-947

Fax Audit No. H01000101865 3

**ACCEPTANCE OF DESIGNATION**  
**REGISTERED AGENT/REGISTERED OFFICE**

HAVING BEEN NAMED AS REGISTERED AGENT AND TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE STATED CORPORATION AT THE PLACE DESIGNATED IN THIS CERTIFICATE, 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 RELATING TO THE PROPER AND COMPLETE PERFORMANCE OF MY DUTIES, AND I AM FAMILIAR WITH AND ACCEPT THE OBLIGATIONS OF MY POSITION AS REGISTERED AGENT.

SIGNATURE: \_\_\_\_\_  
DATE: \_\_\_\_\_

*John L. Z...*

REGISTERED AGENT FILING FEE: \$35.00

**FILED**

01 SEP 24 AM 10:31

SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Fax Audit No. H01000101865 3