

PH000030592

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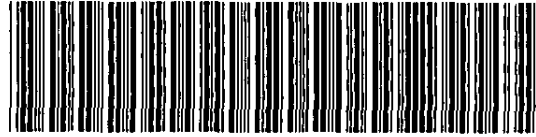
(Business Entity Name)

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DIVISION OF CORPORATIONS

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14 APR -4 AM 6:59

SECRETARY OF STATE
TALLAHASSEE FLORIDA



CORPORATION SERVICE COMPANY*

ACCOUNT NO. : I20000000195

REFERENCE : 083363 4723402

AUTHORIZATION :

COST LIMIT : \$ 70.00

ORDER DATE : April 4, 2014

ORDER TIME : 12:14 PM

ORDER NO. : 083363-005

CUSTOMER NO: 4723402

DOMESTIC FILING

NAME: PERRY MANAGER, INC.

EFFECTIVE DATE:

☒ ARTICLES OF INCORPORATION
☐ CERTIFICATE OF LIMITED PARTNERSHIP
☐ ARTICLES OF ORGANIZATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

☐ CERTIFIED COPY
☒ PLAIN STAMPED COPY
☐ CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Susie Knight - EXT. 52956

EXAMINER'S INITIALS: _____

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TALLAHASSEE FLORIDA

ARTICLES OF INCORPORATION

In compliance with Chapter 607 and/or Chapter 621, F.S. (Profit)

ARTICLE I. NAME

The name of the corporation shall be: PERRY MANAGER, INC. (The "company")

ARTICLE II. PRINCIPAL OFFICE

Principal street address Mailing address

6000 Island Blvd., Suite 1805
Aventura, Florida 33160

ARTICLE III. PURPOSE

The purpose for which the Company is organized is: Notwithstanding any other organizational documents or any provisions of law that empowers Company, the following provisions shall be operative and controlling so long as the Loan (hereinafter, defined) by **Cantor Commercial Real Estate Lending, L.P.**, a Delaware corporation or its successors and/or assigns (collectively, the "Lender") to **A. Perry Properties LLC** (the "Borrower") is outstanding:

The sole purpose of the Company has been, is and will be to manage, own and hold the membership interest in the Borrower, whose sole purpose is to acquire, own, hold, maintain and operate the property known as The Aventura Medical Center, located at 2925 Aventura Blvd., Aventura, Florida (the "Property"), together with such other activities as may be necessary or advisable in connection with such limited purpose. The Company has not engaged and shall not engage in any business, and it has and shall have no purpose, unrelated to the foregoing purpose and has not owned, does not own and shall not acquire any real property or own assets other than those in furtherance of the limited purposes of the Company.

1. Additional Definitions.

"Bankruptcy Action" shall be defined as such term is defined in the Loan Agreement.

"Bylaws" shall mean the bylaws of the Company; as such Bylaws may be amended, restated or otherwise modified from time to time.

"Certificate" shall mean this Certificate of Incorporation of the Company, as such Certificate may be amended, restated or otherwise modified from time to time.

"Independent Director" shall have the meaning set forth in the Loan Agreement. The initial Independent Director shall be Michelle A. Dreyer.

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TALLAHASSEE, FLORIDA

"Lender" shall mean Cantor Commercial Real Estate Lending, L.P., a Delaware limited partnership, and its successors and/or assigns.

"Loan" shall mean that certain loan from Lender to Borrower in the principal sum of approximately Thirteen Million Dollars (\$13,000,000.00), as evidenced by, among other documents, the Loan Agreement.

"Loan Agreement" shall mean that certain Loan Agreement dated on or about April 29, 2014, entered into by and between Lender, as lender, and Borrower, as borrower, in connection with the Loan, as the same may be amended, restated or otherwise modified from time to time.

"SPE Provisions" shall mean all of the representations, warranties and covenants set forth in this Article III.

Any capitalized terms not otherwise defined herein shall have the meaning ascribed to such term in the Loan Agreement.

2. SPE Provisions Prevail. In the event of any conflict between the terms of these SPE Provisions and any other provision set forth in this Certificate or in any other organizational document of the Company, the terms set forth in this Article Three shall prevail.
3. Third Party Beneficiary. For so long as the Debt or any portion thereof remains outstanding, the Lender shall be an intended third party beneficiary of this Certificate with respect to these SPE Provisions.
4. No Amendment. For so long as the Debt or any portion thereof remains outstanding, the Company shall not amend, terminate or otherwise alter the provisions of these SPE Provisions without Lender's prior written consent.
5. Separateness Covenants. Notwithstanding any provision of this Certificate or of any other organizational document of the Company to the contrary, so long as the Debt or any portion thereof remains outstanding, unless expressly permitted under the Loan Documents or expressly approved by Lender in writing, at all times prior to, on and after the date hereof, the Company:
 - (a) was, is and will be organized solely for the purpose of acting as a manager of Borrower, and owning an interest in Borrower;
 - (b) has not been, is not, and will not be engaged, in any business unrelated to acting as manager of Borrower or owning an interest in Borrower;

- (c) has not had, does not have, and will not have, any assets other than its membership interest in Borrower;
- (d) has not engaged, sought or consented to, and will not engage in, seek or consent to, any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets, transfer of shares or amendment of this Certificate or the Bylaws with respect to the matters set forth in these SPE Provisions;
- (e) has, and will continue to have, at least one (1) Independent Director;
- (f) directly owns at least one-half-of-one percent (0.5%) of the equity of the Borrower;
- (g) has not caused or allowed, and will not cause or allow the directors, shareholders, or managers of the Company to take any Bankruptcy Action, either with respect to itself or Borrower, in each case unless the Independent Director of the Company shall have consented in writing to such action;
- (h) has been, is and intends to remain solvent and has paid and shall pay its debts and liabilities from its then available assets (including a fairly-allocated portion of any personnel and overhead expenses that it shares with any Affiliate) as the same shall become due, and has maintained and shall 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;
- (i) has not failed, and will not fail, to correct any known misunderstanding regarding the separate identity of the Company and has not and shall not identify itself as a *division of any other Person*;
- (j) has maintained and will maintain its accounts, books and records separate from any other Person and has filed and will file its own tax returns, except to the extent that it has been or is required to file consolidated tax returns by law;
- (k) has maintained and will maintain its own records, books, resolutions and agreements;
- (l) has not commingled, and will not commingle, its funds or assets with those of any other Person and (ii) *has not participated and will not participate in any cash management system with any other Person*;
- (m) has held and will hold its assets in its own name;
- (n) has conducted and shall conduct its business in its name or in a name franchised or licensed to it by an entity other than an Affiliate of itself or of Borrower, except for

business conducted on behalf of itself by another Person under a business management services agreement that is on commercially reasonable terms, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of the Company;

- (o) has maintained and will maintain its books, bank accounts, balance sheets, financial statements, accounting records and other entity documents separate from any other Person and has not permitted, and will not permit, its assets to be listed as assets on the financial statement of any other entity except as required by GAAP; provided, however, that appropriate notation shall be made on any such consolidated statements to indicate its separateness from such Affiliate and to indicate that its assets and credit are not available to satisfy the debt and other obligations of such Affiliate or any other Person and such assets shall be listed on its own separate balance sheet;
- (p) has paid and will pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;
- (q) has observed and will observe all corporate formalities;
- (r) has had no and will have no Indebtedness (including loans, whether or not such loans are evidenced by a written agreement);
- (s) has not assumed or guaranteed or become obligated for, and will not assume or guarantee or become obligated for, the debts of any other Person and has not held out and will not hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Certificate;
- (t) has not acquired and will not acquire obligations or securities of its partners, members or shareholders or any other Affiliate;
- (u) has allocated and will allocate, fairly and reasonably, any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared office space and services performed by any employee of an Affiliate;
- (v) has maintained and used, now maintains and uses, and will maintain and use, separate stationery, invoices and checks bearing its name, which stationery, invoices, and checks utilized by the Company or utilized to collect its funds or pay its expenses have borne, shall bear its own name and have not borne and shall not

bear the name of any other entity unless such entity is clearly designated as being the Company's agent;

- (w) has not pledged and will not pledge its assets for the benefit of any other Person;
- (x) has held itself out and identified itself, and will hold itself out and identify itself, as a separate and distinct entity under its own name or in a name franchised or licensed to it by an entity other than an Affiliate of itself or of Borrower and not as a division or part of any other Person, except for services rendered under a business management services agreement with an Affiliate that complies with the terms contained in the clause immediately below, so long as the manager, or equivalent thereof, under such business management services agreement holds itself out as an agent of the Company;
- (y) 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 other Person;
- (z) has not made and will not make loans to any Person or hold evidence of indebtedness issued by any other Person or entity (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity);
- (aa) has not identified and will not identify its shareholders or any Affiliate of any of them, as a division or part of it, and has not identified itself, and shall not identify itself, as a division of any other Person;
- (bb) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its members or Affiliates except (i) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party, and (ii) in connection with the Loan Documents;
- (cc) other than capital contributions and distributions permitted under the terms of its organizational documents, has not entered into or been a party to, and shall not enter into or be a party to, any transaction with any of its members or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable terms comparable to those of an arm's length transaction with an unrelated third party;

- (dd) has not had and shall not have any obligation to, and has not indemnified and shall not indemnify its officers, directors or members, as the case may be, in each case, unless such an obligation or indemnification is fully subordinated to the Loan and shall not constitute a claim against it or Borrower in the event that its or Borrower's cash flow is insufficient to pay the Loan;
 - (ee) does not and will not have any of its obligations guaranteed by any Affiliate;
 - (ff) has complied and will comply with all of the terms and provisions contained in its organizational documents and cause statements of facts contained in its organizational documents to be and to remain true and correct; and
 - (gg) has not permitted and shall not permit any Affiliate or constituent party independent access to its bank accounts.
6. Prohibited Transfers. For so long as the Debt or any portion thereof remains outstanding, the Company shall not allow direct or indirect transfers of shares in the Company that would violate the provisions of the Loan Documents, including but not limited to Section 5.2.10 of the Loan Agreement.
7. Subordination of Indemnification Obligations. For so long as the Loan or any portion thereof remains outstanding, the Company's obligations under this Certificate or the Bylaws, if any, to indemnify its director and officers, members or managers, as applicable, is hereby fully subordinate to the Loan and the Loan Documents and no indemnity payment from funds of the Company (as distinct from funds from other sources, such as insurance) of any indemnity under this Certificate or the Bylaws, if any, shall be payable from amounts allocable to any other person pursuant to the Loan Documents.
8. Certain Duties of Independent Director. Notwithstanding any duty otherwise existing at law or in equity, to the fullest extent permitted by law, the Independent Director shall consider only the interests of the Company, including its respective creditors, in acting or otherwise voting on the matters referred to in Section 5(g) above. Except for duties to the Company as set forth in the immediately preceding sentence (including duties to the shareholders and the Company's creditors solely to the extent of their respective economic interests in the Company but excluding (a) all other interests of the shareholders, (b) the interests of other Affiliates of the Company, and (c) the interests of any group of Affiliates of which the Company is a part), the Independent Director shall not have any fiduciary duties to the shareholders or any other Person bound by this Certificate or the Bylaws, provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

ARTICLE IV SHARES

The number of shares of stock is: 200

ARTICLE V INITIAL OFFICERS AND/OR DIRECTORS

Name and Title: Arnold S. Wax, President and Director

Address: 6000 Island Blvd, Suite 1805
Aventura, Florida 33160

Name and Title: Kerrin Berlent, Vice President and Director

Address: 3143 Broadway, Suite 2A
New York, New York 10027

Name and Title: Theodore Weiss, Treasurer

Address: 1277 East 26th Street
Brooklyn, New York 11210

Name and Title: Michelle A. Dreyer, Independent Director

ARTICLE VI REGISTERED AGENT

The name and Florida street address (P.O. Box NOT acceptable) of the registered agent is:

Name: Corporation Service Company

Address: 1201 Hays Street
Tallahassee, FL 32301

ARTICLE VII CERTAIN PROHIBITED ACTIVITIES

The Company shall have no authority to perform any act in violation of any (a) applicable laws or regulations or (b) any agreement between the Borrower and the Lender and the Company and the Lender.

The Company shall not:

(a) make any loans to any member of the Company (individually, a "Member" and collectively, the "Members"), Affiliate, any Equity Holder or any Affiliate of any Member or Equity Holder;

(b) except as permitted by the Lender in writing, sell, encumber (except with respect to Lender) or otherwise transfer or dispose of all or substantially all of the properties of the Company (a sale or disposition will be deemed to be "all or substantially all of the properties of the Company" if the sale or disposition includes the Property or if the total value of the properties sold or disposed of in such transaction and during the twelve months preceding such transaction is sixty six and two thirds percent (66-2/3%) or more in value of the Company's total assets as of the end of the most recently completed corporate fiscal year);

(c) to the fullest extent permitted by law, dissolve, wind up or liquidate the Company;

(d) merge, consolidate or acquire all or substantially all of the assets of any other person or entity (whether or not an Affiliate);

(e) change the nature of the business of the Company; or

(f) except as permitted by the Lender in writing, amend, modify or otherwise change its Organizational Documents (which approval, after a Secondary Market Transaction with respect to the Loan, may be conditioned upon Lender's receipt of a Rating Confirmation).

The Company shall not, and no person or entity on behalf of the Company shall, either with respect to itself or the Borrower, without the prior written affirmative vote of one hundred percent (100%) of the Members and the Independent Director: (a) institute proceedings to be adjudicated bankrupt or insolvent; (b) consent to the institution of bankruptcy or insolvency proceedings against it or the Borrower; (c) file a petition seeking, or consenting to, reorganization or relief under any applicable federal or state law relating to bankruptcy; (d) consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or the Borrower or a substantial part of their respective property; (e) make any assignment for the benefit of creditors; (f) admit in writing the Company's or the Borrower's inability to pay their respective debts generally as they become due or declare or effect a moratorium on its or the Borrower's respective debts; or (g) take any corporate action in furtherance of any such action.

The Company shall have no indebtedness or incur any liability other than (a) unsecured debts and liabilities for trade payables and accrued expenses incurred in the ordinary course of its business managing, owning and holding the membership interest in the Borrower, provided, however, that such unsecured indebtedness or liabilities (i) are in amounts that are normal and reasonable under the circumstances, but in no event to exceed two percent (2%) of the original principal amount of the Loan and (ii) are not evidenced by a note and are paid when due, but in no event for more than sixty (60) days from the date that such indebtedness or liabilities are incurred and (b) the Loan. No indebtedness of the Company shall be secured.

ARTICLE VIII INDEMNIFICATION

Any indemnification obligation of Company to any Equity Holder shall (i) be fully subordinated to the Loan, and (ii) not constitute a claim against the Company or its assets until such time as the Loan has been indefeasibly paid in accordance with its terms and otherwise has been fully discharged (or, if applicable, defeased as contemplated by the Loan Agreement (as defined below)).

For purposes of this certificate, Affiliate shall mean any person or entity which directly or indirectly through one or more intermediaries (i) controls, is controlled by or is under common control with a specified person or entity, or (ii) at least twenty-five percent (25%) of the ownership interests in which are owned by a specified person or entity and/or entities described in clause (i) above with respect thereto, or (iii) owns (individually or with other entities described in clause (i) above) at least twenty-five percent (25%) of the ownership interests in a specified person or entity. For purposes of the definition of "Affiliate", the terms "control", "controlled", or "controlling" with respect to a specified person or entity shall include, without limitation, (A) the

ownership, control or power to vote ten percent (10%) or more of (1) the outstanding shares of any class of voting securities or (2) beneficial interests, of any such person or entity, as the case may be, directly or indirectly, or acting through one or more persons or entities, (B) the control in any manner over the general partner(s) or the election of more than one director or trustee (or persons exercising similar functions) of such person or entity, or (C) the power to exercise, directly or indirectly, control over the management or policies of such person or entity.

ARTICLE IX INCORPORATOR

The name and address of the Incorporator is:

Name: Arnold S. Wax
Address: 6000 Island Blvd, Suite 1805
Aventura, Florida 33160

I submit this document and affirm that the facts stated herein are true. I am aware that the false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S.


Required Signature/Incorporator

April 4, 2014
Date

Having been named as registered agent to accept service of process for the above stated corporation at the place designated in this certificate, I am familiar with and accept the appointment as registered agent and agree to act in this capacity.
Corporation Service Company

By 
Required Signature/Registered Agent

April 4, 2014
Date

Sue G. Knight
Assistant Vice President

COVER LETTER

TO: Registration Section
Division of Corporations

SUBJECT: A. PERRY PROPERTIES LLC
Name of Limited Liability Company

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

Please return all correspondence concerning this matter to the following:

DAVID HAGER, ESQ.

Name of Person

ROSENBERG & ESTIS, P.C.

Firm/Company

733 THIRD AVENUE

Address

NEW YORK, NEW YORK 10017

City/State and Zip Code

dhager@rosenbergestis.com

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

For further information concerning this matter, please call:

DAVID HAGER, ESQ.

212

551-1243

at ()

Name of Person

Area Code

Daytime Telephone Number

Enclosed is a check for the following amount:

☐

\$125.00 Filing Fee

☐

\$130.00 Filing Fee &
Certificate of Status

☐

\$155.00 Filing Fee &
Certified Copy
(additional copy is enclosed)

☐

\$160.00 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

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