

9/26/2014 10:44:05 From: To: 8506176380

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Division of Corporations

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Florida Department of State
Division of Corporations
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To: Division of Corporations
Fax Number : (850) 617-6380

From: Account Name : C T CORPORATION SYSTEM
Account Number : FCA000000023
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DIVISION OF CORPORATIONS
FLORIDA DEPARTMENT OF STATE

COR AMND/RESTATE/CORRECT OR O/D RESIGN
CHERRY GP INC.

Certificate of Status	0
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FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA

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Help

C. Lewis
9-29-14

COVER LETTER

TO: Amendment Section
Division of Corporations

NAME OF CORPORATION: Cherry GP Inc.

DOCUMENT NUMBER: P14000072674

The enclosed *Articles of Amendment* and fee are submitted for filing.

Please return all correspondence concerning this matter to the following:

Name of Contact Person

Firm/ Company

Address

City/ State and Zip Code

scottbradley@bgidevelopment.com

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

For further information concerning this matter, please call:

Scott D. Bradley

Name of Contact Person

at (941) 955-8000

Area Code & Daytime Telephone Number

Enclosed is a check for the following amount made payable to the Florida Department of State:

☐ \$35 Filing Fee

☐ \$43.75 Filing Fee &
Certificate of Status

☐ \$43.75 Filing Fee &
Certified Copy
(Additional copy is
enclosed)

☐ \$52.50 Filing Fee
Certificate of Status
Certified Copy
(Additional Copy
is enclosed)

Mailing Address

Amendment Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

Street Address

Amendment Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

FLORIDA
DIVISION OF CORPORATIONS
14 SEP 26 AM 9:31

Articles of Amendment
to
Articles of Incorporation
of

Cherry GP Inc.

(Name of Corporation as currently filed with the Florida Dept. of State)

P14000072674

(Document Number of Corporation (if known))

Pursuant to the provisions of section 607.1006, Florida Statutes, this *Florida Profit Corporation* adopts the following amendment(s) to its Articles of Incorporation:

A. If amending name, enter the new name of the corporation:

The new name must be distinguishable and contain the word "corporation," "company," or "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.," or the designation "Corp.," "Inc.," or "Co.". A professional corporation name must contain the word "chartered," "professional association," or the abbreviation "P.A."

B. Enter new principal office address, if applicable:

(Principal office address MUST BE A STREET ADDRESS)

C. Enter new mailing address, if applicable:

(Mailing address MAY BE A POST OFFICE BOX)

D. If amending the registered agent and/or registered office address in Florida, enter the name of the new registered agent and/or the new registered office address:

Name of New Registered Agent _____

(Florida street address)

New Registered Office Address: _____, Florida _____

(City)

(Zip Code)

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

I hereby accept the appointment as registered agent. I am familiar with and accept the obligations of the position.

Signature of New Registered Agent, if changing

If amending the Officers and/or Directors, enter the title and name of each officer/director being removed and title, name, and address of each Officer and/or Director being added:

(Attach additional sheets, if necessary)

Please note the officer/director title by the first letter of the office title:

P = President; V = Vice President; T = Treasurer; S = Secretary; D = Director; TR = Trustee; C = Chairman or Clerk; CEO = Chief Executive Officer; CFO = Chief Financial Officer. If an officer/director holds more than one title, list the first letter of each office held. President, Treasurer, Director would be PTD.

Changes should be noted in the following manner. Currently John Doe is listed as the PSI and Mike Jones is listed as the V. There is a change. Mike Jones leaves the corporation. Sally Smith is named the V and S. These should be noted as John Doe, PT as a Change, Mike Jones, V as Remove, and Sally Smith, SV as an Add.

Example:

☒ Change PT John Doe

☒ Remove V Mike Jones

☒ Add SV Sally Smith

Type of Action
(Check One)

Title

Name

Address

1) ☐ Change

☐ Add

☐ Remove

2) ☐ Change

☐ Add

☐ Remove

3) ☐ Change

☐ Add

☐ Remove

4) ☐ Change

☐ Add

☐ Remove

5) ☐ Change

☐ Add

☐ Remove

6) ☐ Change

☐ Add

☐ Remove

E. If amending or adding additional Articles, enter change(s) here:

(Attach additional sheets, if necessary). (Be specific)

Article III is hereby deleted in its entirety and replaced with Article III on Exhibit A.

Exhibit A is attached hereto and incorporated herein by reference.

F. If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself:

(If not applicable, indicate N/A)

STATE OF CALIFORNIA
DIVISION OF CORPORATIONS

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The date of each amendment(s) adoption: _____, if other than the date this document was signed.

Effective date if applicable: _____
(no more than 90 days after amendment file date)

Adoption of Amendment(s) (CHECK ONE)

☐ The amendment(s) was/were adopted by the shareholders. The number of votes cast for the amendment(s) by the shareholders was/were sufficient for approval.

☐ The amendment(s) was/were approved by the shareholders through voting groups. The following statement must be separately provided for each voting group entitled to vote separately on the amendment(s):

"The number of votes cast for the amendment(s) was/were sufficient for approval

by _____"
(voting group)

☐ The amendment(s) was/were adopted by the board of directors without shareholder action and shareholder action was not required.

☒ The amendment(s) was/were adopted by the incorporators without shareholder action and shareholder action was not required.

Dated 9/26/14

Signature [Signature]

(By a director, president or other officer – if directors or officers have not been selected, by an incorporator – if in the hands of a receiver, trustee, or other court appointed fiduciary by that fiduciary)

Richard S. Rivitz

(Typed or printed name of person signing)

Incorporator

(Title of person signing)

FLORIDA
DIVISION OF CORPORATIONS

14 SEP 26 AM 9:32

Exhibit A
to
Articles of Amendment to Articles of Incorporation
of
Cherry GP Inc.

"Article III

SPE PROVISIONS

1. Additional Definitions.

- (a) "Bylaws" shall mean the bylaws of the Corporation, as such Bylaws may be amended, restated or otherwise modified from time to time..
- (b) "Certificate" shall mean the Articles of Incorporation of the Corporation, as such Certificate may be amended, restated or otherwise modified from time to time.
- (c) "Corporation" shall mean Cherry GP Inc., a Florida corporation. The Corporation is the general partner of Borrower (as defined below).
- (d) "Lender" shall mean Cantor Commercial Real Estate Lending, L.P., a Delaware limited partnership, and its successors and/or assigns.
- (e) "Loan" shall mean that certain loan from Lender to Cherry Apartments Limited Partnership, a Delaware limited partnership ("Borrower") in the principal sum of Twelve Million Dollars (\$12,000,000), as evidenced by, among other documents, the Loan Agreement;
- (f) "Loan Agreement" shall mean that certain Loan Agreement dated on or about September 30, 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;
- (g) "SPE Provisions" shall mean all of the representations, warranties and covenants set forth in this Article III.
- (h) All other terms used, but not defined, in these SPE Provisions, shall have the meanings ascribed to them 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 Corporation, the terms set forth in these SPE Provisions 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 Corporation 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 Corporation 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 Corporation:
 - (a) was, is and will be organized solely for the purpose of acting as a general partner of Borrower, and owning an interest in Borrower;
 - (b) has not been, is not, and will not be engaged, in any business unrelated to the acquisition of, and acting as general partner of Borrower or owning an interest in Borrower;
 - (c) has not had, does not have, and will not have, any assets other than its partnership 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 except as expressly permitted by the Loan Documents;
 - (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 (or 0.1% if the Borrower is a Delaware limited liability company);
 - (g) has not caused or allowed, and will not cause or allow the directors, shareholders, or managers of the Corporation to take any Bankruptcy Action, either with respect to itself or Borrower, in each case unless the Independent Director of the Corporation shall have consented in writing to such action
 - (h) has been, is and intends to remain solvent and has paid and intends to 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 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 be construed to require the direct

or indirect equity holders in the Corporation to make capital contributions to the Corporation or otherwise make funds available to the Corporation;

- (i) has not failed, and will not fail, to correct any known misunderstanding regarding the separate identity of the Corporation 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 may file (or cause to be filed) or be a part of consolidated tax returns of its Affiliates;
- (k) has maintained and will maintain its own records, books, resolutions and agreements;
- (l) (i) 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 Corporation;
- (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 may be permitted by the Approved Accounting Method; 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 intends to pay its own liabilities and expenses, including the salaries of its own employees (if any), out of its own funds and assets, and has maintained and will maintain a sufficient number of employees (if any) 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 Corporation 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 Corporation'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 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 Corporation, and except to the extent that it has held itself out and identified itself as an entity disregarded from its tax owner under applicable law;
- (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 in all material respects 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 in all material respects; 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 Corporation shall not allow direct or indirect transfers of shares in the Corporation 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 Corporation'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 Corporation (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 Corporation and the Borrower, including each entity's respective creditors, as applicable, in acting or otherwise voting on the matters referred to in Section 5(g) above. Except for duties to the Corporation and the Borrower as set forth in the immediately preceding sentence (including duties to the shareholders and the Corporation's or the Borrower's creditors solely to the extent of their respective economic interests in the Corporation or the Borrower, as applicable but excluding (a) all

other interests of the shareholders or partners, as applicable, (b) the interests of other Affiliates of the Corporation or the Borrower, and (c) the interests of any group of Affiliates of which the Corporation or the Borrower 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."