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Rossway Swan Tierney Barry, P.C.

No. 2279

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Florida Department of State

Division of Corporations

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Kite VN Corporation

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ARTICLES OF INCORPORATION

OF

KITE VN CORPORATION

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SECRETARY OF STATE
TALLAHASSEE FLORIDA

The undersigned incorporator hereby forms a corporation under Chapter 607 of the laws of the State of Florida.

ARTICLE I. NAME

The name of the corporation (the "Corporation") shall be as follows:

KITE VN CORPORATION

ARTICLE II. PRINCIPAL OFFICE

The principal place of business of this Corporation shall be 1045 Winding River Road, Vero Beach, Florida 32963, and the mailing address shall be the same.

ARTICLE III. PURPOSE

The Corporation's business and purpose shall consist solely of the following:

(i) To acquire a membership interest in and act as the Manager of VERO NORTH, LLC, a Florida limited liability company (the "LLC"), which LLC is engaged solely in the ownership, operation and management of the real estate project known as SpringHill Suites, located in Indian River County, Florida (the "Property"), pursuant to and in accordance with these Articles of Incorporation and the Articles and Operating Agreement for the LLC (collectively, the "LLC Agreement"); and

(ii) to engage in such other lawful activities permitted to corporations by the applicable laws and statutes for such entities of the State of Florida as are incidental, necessary or appropriate to the foregoing.

ARTICLE IV. SHARES OF CAPITAL STOCK

The maximum number of shares of stock that this Corporation is authorized to have outstanding at any one time is one thousand (1,000) shares of common stock having One and No/100 (\$1.00) Dollar par value per share.

The holders of the common shares shall be entitled to:

(a) vote at all meetings of shareholders;

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- (b) receive dividends as and when declared by the Board of Directors of the Corporation; and
- (c) receive the remaining property of the Corporation upon dissolution, liquidation, or winding-up of the Corporation.

The transfer of shares of the Corporation shall be restricted in that no shareholder shall be entitled to transfer any share or shares without either:

- (a) the previous sanction of the holders of a majority of the shares of the Corporation outstanding at the time of such transfer given by a resolution passed at a meeting of the holders of such shares or by an instrument or instruments in writing signed by the holder or holders of a majority of such shares; or
- (b) the previous sanction of the Board of Directors of the Corporation by a resolution passed at a meeting of the Board of Directors or by an instrument or instruments in writing signed by all of the members of the Board of Directors in lieu of a meeting.

ARTICLE V. OFFICERS AND DIRECTORS

This Corporation shall have two (2) officers and one (1) director, initially. The names and street addresses of the initial officers and director who shall hold office for the first (1st) year of the Corporation, or until successors are elected or appointed, are as follows:

Keith D. Kite - Director/President/Secretary/Treasurer
1045 Winding River Road
Vero Beach, FL 32963; and

Kollin G. Kite - Vice President
1045 Winding River Road
Vero Beach, FL 32963.

No amendment to these articles shall be required in the event the shareholders wish to increase or decrease the number of directors. However, the number may never exceed seven (7) directors.

ARTICLE VI. REGISTERED AGENT

The name and Florida street address of the Registered Agent is:

Kevin M. Barry
Rossway Swan Tierney Barry Lacey & Oliver, P.L.
2101 Indian River Blvd., Suite 200
Vero Beach, FL 32960

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ARTICLE VII. INCORPORATOR

The name and street address of the Incorporator to these Articles of Incorporation are as follows:

ROSSWAY SWAN TIERNY BARRY LACEY & OLIVER, P.L.

ATTN: Kevin M. Barry
The Modern One Building
2101 Indian River Blvd., Suite 200
Vero Beach, Florida 32960.

ARTICLE VIII. TERM OF EXISTENCE

This Corporation is to exist perpetually.

ARTICLE IX. PREEMPTIVE RIGHTS

The Corporation elects to have preemptive rights.

ARTICLE X. SPECIAL PROVISION

This Corporation shall be organized, if the shareholder so elects and if the Corporation qualifies, to comply with the provisions of Subchapter S of the Internal Revenue Code, 26 U.S.C. §1361 et seq., and shall take any and all actions necessary to obtain and maintain its status as an S corporation, as defined and as set forth herein.

ARTICLE XI. SEPARATENESS/OPERATIONS MATTERS.

The Corporation shall:

(a) be solvent and pay its debts from its assets as the same shall become due, and cause the LLC to be solvent and pay its debts from its assets as the same shall become due;

(b) do all things necessary to preserve its existence and corporate formalities, and will not, nor will any shareholder hereof, amend, modify or otherwise change these articles of incorporation, bylaws or regulations in a manner which adversely affects the Corporation's existence as a single-purpose, single-asset "bankruptcy remote" entity, and do all things necessary to preserve the LLC's existence and limited liability company formalities, and will not, nor will any member hereof, amend, modify or otherwise change the LLC's certificate of organization or formation, or articles of organization, operating agreement or regulations in a manner which adversely affects the LLC's, existence as a single-purpose, single-asset "bankruptcy remote" entity;

(c) maintain books and records and bank accounts separate from those of its affiliates, including its principals and members, and cause the LLC to maintain books and

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records and bank accounts separate from those of its affiliates, including its principals and members;

(d) correct any known misunderstanding regarding its or the LLCs status as a separate entity;

(e) conduct, its business in its own name, and cause the LLC to conduct, the LLC's business in the LLC's own name;

(f) pay its own liabilities out of its own funds and assets, and cause the LLC to pay the LLC's own liabilities out of the LLC's own funds and assets;

(g) maintain and utilize a separate telephone number and separate stationery, invoices and checks from any other entity, and cause the LLC to maintain and utilize a separate telephone number and separate stationery, invoices and checks from any other entity;

(h) pay its own liabilities out of its own funds and assets, and cause the LLC to pay the LLC's own liabilities out of the LLC's own funds and assets;

(i) maintain and utilize a separate telephone number and separate stationery, invoices and checks from any other entity, and cause the LLC to maintain and utilize a separate telephone number and separate stationery, invoices and checks from any other entity;

(j) file its own tax returns, and cause the LLC to file its own tax returns;

(k) 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, and cause the LLC to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of the LLC's contemplated business operations;

(l) maintain its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or any other person, and cause the LLC to maintain the LLC's assets in such a manner that it is not costly or difficult to segregate, ascertain or identify the LLC's individual assets from those of any affiliate or any other person; and

(m) observe all legal and customary formalities regarding their respective formation and will continue to observe all legal and customary formalities, and cause the LLC to observe all legal and customary formalities regarding the LLC's respective formation and will continue to observe all legal and customary formalities.

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ARTICLE XII. SUBORDINATION OF INDEMNITIES.

All indemnification obligations of the Corporation are fully subordinated to any obligations relative to the Loan or respecting the Property and such indemnification obligations shall in no event constitute a claim against the Corporation if cash flow in excess of amounts necessary to pay obligations under the Loan is insufficient to pay such indemnification obligations.

ARTICLE XIII. POWERS AND DUTIES

Notwithstanding any other provision of these Articles and any provision of law that otherwise so empowers the Corporation, the Corporation shall not, without the unanimous consent of the Board of Directors do any of the following:

- (a) cause or allow the LLC to own any encumbered asset other than (a) the Property, and (b) incidental personal property necessary for the operation of the Property;
- (b) engage to engage in any business or activity other than those permitted hereby;
- (c) enter into any contract or agreement with any member, manager, principal or affiliate of the Corporation or any affiliate thereof, except in the ordinary course of business and upon terms and conditions that are intrinsically fair and are no less favorable to it than those that would be obtained in a comparable arms-length transaction with an unrelated third party;
- (d) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the Loan, and (ii) unsecured trade and operational debt of the LLC incurred in the ordinary course of business not outstanding for more than sixty (60) days with trade creditors and in amounts as are normal and reasonable under the circumstances, but, in no event to exceed two percent (2%) of the Loan Amount in the aggregate; no debt whatsoever may be secured (senior, subordinate or pari passu) by the Corporation's Property or the Property except the Loan;
- (e) make any loans or advances to any third party (including any member, manager, principal or affiliate of the Corporation, the LLC or Guarantor);
- (f) commingle the funds and other assets of the Corporation or the LLC with those of any member, manager, principal or affiliate or any other person;
- (g) hold itself out to be responsible for the debts or obligations of any other person;
- (h) seek the dissolution or winding up, in whole or in part, of the Corporation or the LLC;

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(i) enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all of the business or assets of, or any stock or beneficial ownership of, any entity;

(j) amend these Articles or the LLC Agreement;

(k) file a voluntary petition or otherwise initiate proceedings to have the Corporation or the LLC adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Corporation or the LLC, or file a petition seeking or consenting to reorganization or relief of the Corporation or the LLC as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Corporation or the LLC; or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Corporation or the LLC or of all or any substantial part of the properties and assets of the Corporation or the LLC, or make any general assignment for the benefit of creditors of the Corporation or the LLC, or admit in writing the inability of the Corporation or the LLC to pay its debts generally as they become due or declare or effect a moratorium on the Company debt or take any action in furtherance of any such action; or

(l) upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against the Corporation or the LLC, seek a supplemental stay or otherwise pursuant to Section 105 or any other provision of the Bankruptcy Code, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender against any guarantor or indemnitor of the Loan or any other party liable with respect thereto by virtue of any indemnity, guaranty or otherwise.

In addition to the foregoing, the Corporation shall not, without prior written consent of the holder of the Promissory Note evidencing the Loan, so long as it is outstanding, take any action set forth in items (a) through (l) above.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal on this 16th day of August, 2017.

ROSSWAY SWAN TIERNEY BARRY
LACEY & OLIVER, P.L.

By: 

Kevin M. Barry, Member

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**ACCEPTANCE OF REGISTERED AGENT DESIGNATED
IN ARTICLES OF INCORPORATION**

ROSSWAY SWAN TIERNEY BARRY LACEY & OLIVER, P.L., whose address is as follows: Attention: Kevin M. Barry, Member, 2101 Indian River Blvd., Suite 200, Vero Beach, FL 32960, which is the same address as set forth in Article VII hereof, having been designated as the Registered Agent in the above and foregoing Articles, is familiar with and accepts the obligations of the position of Registered Agent under Section 607.0505, *Florida Statutes*.

**ROSSWAY SWAN TIERNEY BARRY
LACEY & OLIVER, P.L.**

By:



Kevin M. Barry, Member

Date: August 16, 2017

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SECRETARY OF STATE
TALLAHASSEE FLORIDA

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