

P21000020091

(Requestor's Name)

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(City/State/Zip/Phone #)

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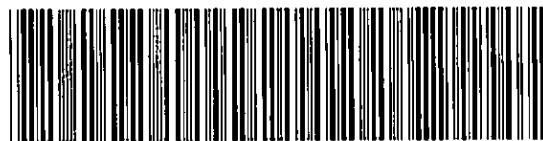
(Business Entity Name)

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Y. SUKKEE

MAR 17 2021

**CORPORATE
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CORP AMEND

1. **KOLL COTTON MANAGER, INC.**

(CORPORATE NAME AND DOCUMENT #)

2.

(CORPORATE NAME AND DOCUMENT #)

3.

(CORPORATE NAME AND DOCUMENT #)

4.

(CORPORATE NAME AND DOCUMENT #)

5.

(CORPORATE NAME AND DOCUMENT #)

6.

(CORPORATE NAME AND DOCUMENT #)

**SPECIAL
INSTRUCTIONS:**

COVER LETTER

TO: Amendment Section
Division of Corporations

NAME OF CORPORATION: Koll Cotton Manager, Inc.

DOCUMENT NUMBER: P21000020091

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

Please return all correspondence concerning this matter to the following:

Kevin A. Denti, Esquire
Name of Contact Person
Kevin A. Denti, P.A.
Firm/ Company
2180 Immokalee Road - Suite #316
Address
Naples, Florida 34110
City/ State and Zip Code
kdenti@dentilaw.com
E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Kevin A. Denti, Esquire at (239) 260-8111
Name of Contact Person Area Code & Daytime Telephone Number

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

- | | | | |
|---|--|---|--|
| <input checked="" type="checkbox"/> \$35 Filing Fee | <input type="checkbox"/> \$43.75 Filing Fee &
Certificate of Status | <input type="checkbox"/> \$43.75 Filing Fee &
Certified Copy
(Additional copy is
enclosed) | <input type="checkbox"/> \$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
The Centre of Tallahassee
2415 N. Monroe Street, Suite 810
Tallahassee, FL 32303

Articles of Amendment
to
Articles of Incorporation
of

Koll Cotton Manager, Inc.

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

P21000020091

(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

Check if applicable

☐ The amendment(s) is/are being filed pursuant to s. 607.0120 (11) (e), F.S.

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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 PST 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:

<input checked="" type="checkbox"/> Change	<u>PT</u>	<u>John Doe</u>
<input type="checkbox"/> Remove	<u>V</u>	<u>Mike Jones</u>
<input type="checkbox"/> Add	<u>SV</u>	<u>Sally Smith</u>

<u>Type of Action</u> (Check One)	<u>Title</u>	<u>Name</u>	<u>Address</u>
1) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____
2) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____
3) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
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4) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____
5) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____
6) <input type="checkbox"/> Change	_____	_____	_____
<input type="checkbox"/> Add			_____
<input type="checkbox"/> Remove			_____

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

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

All provisions contained in the Additional Sheet attached to the Articles of Incorporation are hereby deleted in their entirety and are further hereby replaced with the Additional Sheet attached hereto.

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)

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)

Note: If the date inserted in this block does not meet the applicable statutory filing requirements, this date will not be listed as the document's effective date on the Department of State's records.

Adoption of Amendment(s) (CHECK ONE)

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

March 10, 2021
Dated _____

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)

Walter S. Hagenbuckle

(Typed or printed name of person signing)

President/Director

(Title of person signing)

ADDITIONAL SHEET

1. The following provisions shall be added to the end of Article III:

Notwithstanding the foregoing, the Corporation shall be considered a Special Purpose Bankruptcy Remote Entity. For purposes hereof, a "Special Purpose Bankruptcy Remote Entity" means a Corporation which at all times since its formation has not and at all times thereafter until the Indebtedness is paid in full will not:

- (a) engage in any business or activity other than managing **KOLL COTTON CENTER LLC**, a Florida limited liability company ("Company"), which Company owns the Mortgaged Premises, and for transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;
- (b) acquire or own any assets other than such incidental equipment as may be necessary for managing the Company;
- (c) merge into or consolidate with any Person, or dissolve, terminate, liquidate in whole or in part, or transfer, divide or otherwise dispose of all or substantially all of its assets or change its legal structure;
- (d) fail to observe all organizational formalities, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable Laws of the jurisdiction of its organization or formation, or amend, modify, terminate or fail to comply with the provisions of its organizational documents;
- (e) own any subsidiary, or make any investment in, any Person;
- (f) commingle its assets with the assets of any other Person;
- (g) incur any Debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than trade and operational indebtedness incurred in the ordinary course of business with trade creditors, provided that such indebtedness is (A) unsecured, (B) not evidenced by a note, (C) on commercially reasonable terms and conditions, and (D) due not more than sixty (60) days past the date incurred and paid on or prior to such date; provided, however, the aggregate amount of the indebtedness described above shall not exceed at any time two percent (2%) of the outstanding principal amount of the Indebtedness. No Debt other than the Indebtedness may be secured (subordinate or *pari passu*) by the Mortgaged Premises;
- (h) fail to maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party. The Corporation's assets have not and will not be listed as assets on the financial statement of any other Person; provided, however, that the Corporation's assets may be included in a consolidated financial statement of its affiliates provided that (1) appropriate

notation shall be made on such consolidated financial statements to indicate the separateness of the Corporation and such affiliates and to indicate that the Corporation's assets and credit are not available to satisfy the debts and other obligations of such affiliates or any other Person and (2) such assets shall be listed on the Corporation's own separate balance sheet. The Corporation has maintained and will maintain its books, records, resolutions and agreements as official records;

- (i) enter into any contract or agreement with any officer, director, shareholder, principal or affiliate, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;
- (j) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;
- (k) assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets for the benefit of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;
- (l) make any loans or advances to any Person;
- (m) fail to file its own tax returns unless prohibited by applicable Law from doing so (except that the Corporation may file or may include its filing as part of a consolidated federal tax return, to the extent required and/or permitted by applicable Law, provided that, there shall be an appropriate notation indicating the separate existence of the Corporation and its assets and liabilities);
- (n) fail either to hold itself out to the public as a legal entity separate and distinct from any other Person and not as a division or part of any other Person or to conduct its business solely in its own name or fail to correct any known misunderstanding regarding its separate identity;
- (o) fail 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 (to the extent there exists sufficient cash flow from the Mortgaged Premises to do so after the payment of all operating expenses and debt service and shall not require any equity owner to make additional capital contributions to the Corporation);
- (p) without the prior unanimous written consent of all of its directors and the consent of the Independent Director, (1) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any Debtor Relief Laws (for purposes hereof, "Debtor Relief Laws" shall mean any Federal, state, or local law, domestic or foreign, as now or hereafter in effect relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts, or any similar law affecting the rights of creditors, including the United States Bankruptcy Code, as in effect from time to

time), (2) seek or consent to the appointment of a receiver, liquidator or any similar official, (3) take any action that might cause such entity to become insolvent, or (4) make an assignment for the benefit of creditors;

- (q) fail to allocate shared expenses (including, without limitation, shared office space) or fail to use separate stationery, invoices and checks;
- (r) fail to remain solvent, to pay its own liabilities (including, without limitation, salaries of its own employees) from its own funds or fail to maintain a sufficient number of employees in light of its contemplated business operations (in each case to the extent there exists sufficient cash flow from the Mortgaged Premises to do so); or
- (s) acquire obligations or securities of its shareholders or other affiliates, as applicable, or identify its shareholders or other affiliates, as applicable, as a division or part of it.

All capitalized terms used in this Section not otherwise defined shall have the meaning set forth in the Loan Agreement as defined herein. In the event of any conflict between capitalized terms used in this Section and the Loan Agreement, the Loan Agreement shall control.

2. The following provisions shall be added as new Article IX:

- (i) All times there shall be at least one (1) duly appointed member of the Corporation's board of directors (hereinafter each shall be referred to as an "Independent Director") reasonably satisfactory to the Administrative Agent who shall not have been at the time of such individual's initial appointment, and (a) shall not have been at any time during the preceding five (5) years, and shall not be at any time while serving as Independent Director, (1) a shareholder (or other equity owner) of, or an officer, director (other than in its capacity as Independent Director), partner, member or employee of, the Company or the Corporation or any of their respective shareholders, partners, members, subsidiaries or affiliates (other than a nationally-recognized company that routinely provides professional independent managers and other corporate services to the Company or any of its equityholders or affiliates in the ordinary course of its business), (2) a customer of, or supplier to, or other Person who derives any of its purchases or revenues from its activities with, the Company or the Corporation or any of their respective shareholders, partners, members, subsidiaries or affiliates, (3) a Person who Controls or is under common Control with any such shareholder, officer, director, partner, member, employee, supplier, customer or other Person, or (4) a member of the immediate family of any such shareholder, officer, director, partner, member, employee, supplier, customer or other Person, and (b) shall be engaged by the Corporation in connection with an Approved ID Provider (which shall expressly include CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, and Lord Securities Corporation). Each Independent Director at the time of their initial engagement shall have had at least three (3) years prior experience as an independent director to a company or a corporation in the

business of owning and operating commercial properties similar in type and quality to the Mortgaged Premises.

- (ii) The board of directors of the Corporation and the constituent members thereof (hereinafter collectively referred to as the "Constituent Members") shall not take any action which, under the terms of any organizational documents of the Corporation, requires the unanimous vote of (1) the board of directors of the Corporation or (2) the Constituent Members, unless at the time of such action there shall be at least one (1) Independent Director engaged as provided by the terms hereof. Any resignation, removal or replacement of any Independent Director shall not be effective without two (2) Business Days prior written notice to Lender accompanied by evidence that the replacement Independent Director satisfies the applicable terms and conditions hereof and of the applicable organizational documents. To the fullest extent permitted by applicable law, including Section 605.0111 of the FL Act and notwithstanding any duty otherwise existing at law or in equity, the Independent Director shall consider only the interests of the Constituent Members, the Company, the Corporation, and the Company's creditors in acting or otherwise voting on the matters provided for herein and in the Company's and the Corporation's organizational documents (which such fiduciary duties to the Constituent Members, the Company, the Corporation, and the Company's creditors, in each case, shall be deemed to apply solely to the extent of their respective economic interests in the Company or the Corporation, exclusive of (A) all other interests (including, without limitation, all other interests of the Constituent Members), (B) the interests of other affiliates of the Constituent Members, the Company, and the Corporation, and (C) the interests of any group of affiliates of which the Constituent Members, the Company, or the Corporation is a part). Other than as provided above, the Independent Director shall not have any fiduciary duties to any Constituent Members, any directors of the Corporation, or any other Person. The foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing under applicable Law. To the fullest extent permitted by applicable Law, an Independent Director shall not be liable to the Company, the Corporation, any Constituent Member, or any other Person for breach of contract or breach of duties (including fiduciary duties), unless the Independent Director acted in bad faith or engaged in willful misconduct. Except as provided above, the Independent Director shall, in exercising its rights and performing its duties under the applicable organizational documents, have a fiduciary duty of loyalty and care similar to that of a director of a business corporation organized under the General Corporation Law of the State of Florida.

3. The following provisions shall be added as new Article X:

Capitalized terms not otherwise defined in these Articles of Incorporation shall have the meanings as defined in the Loan Agreement.

- (i) "Administrative Agent" shall mean **VOYA INVESTMENT MANGMENT LLC**, a Delaware limited liability company, together with its affiliates, successors and assigns.

- (ii) "Loan Agreement" shall mean that certain Loan Agreement between Administrative Agent, in its capacity as administrative agent on behalf of the "Lenders" (as defined therein), and the Company.
- (iii) "Mortgaged Premises" shall mean 4050 E. Cotton Center Boulevard, Phoenix, Arizona.