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DEERFIELD 21 CORPORATION

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DEERFIELD 21 CORPORATION

ARTICLES OF AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF  
DEERFIELD 21 CORPORATION

Pursuant to the provisions of Section 607.1006, Florida Statutes, Deerfield 21 Corporation, a Florida corporation (the "Corporation"), adopts the following amendment to its Articles of Incorporation:

1. The Corporation's Articles of Incorporation are hereby amended by deleting Article II and Article VI in their entirety, inserting new Articles II and VI in their place and by deleting Articles XII, XIII and XIV and substituting new Articles XII and XIII to read as follows:

ARTICLE II. NATURE OF BUSINESS

Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: The nature of the business and of the purposes to be conducted and promoted by the Corporation, is to engage solely in the following activities:

To acquire that certain parcel of real property, together with all improvements located thereon, located at 2096 N.E. 2<sup>nd</sup> Street, Deerfield Beach, Florida currently known as *Wyndham Deerfield Beach Hotel* and to acquire the ownership of, or to license, parking lots or facilities for the provision of parking for such hotel business (collectively, the "Property").

To own, hold, sell, assign, transfer, operate, lease, manage, mortgage, pledge and otherwise deal with the Property.

To exercise all powers enumerated in the Florida Business Corporation Act, incidental, necessary or appropriate to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

ARTICLE VI. ADDRESS

The address of the principal office of the Corporation is c/o Chase Enterprises, 225 Asylum Street, 29<sup>th</sup> Floor, Hartford, CT 06103-1534.

ARTICLE XII. CERTAIN PROHIBITED ACTIVITIES

Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern for so long as any loan exists on the Property in favor of UBS Real Estate Securities Inc. (the "Loan") or its successors and assigns

(collectively, the "Lender"). Until such time as the Loan to Lender is paid in full the following shall apply:

(a) The sole purpose of the Corporation has been, is and will be, to acquire, own, hold, maintain, finance, refinance and operate the Property, together with such other activities as may be necessary or advisable in connection with the ownership and operation of the Property. The Corporation has not engaged, and does not and shall not engage, in any business, and it has and shall have no purpose, unrelated to the Property. The Corporation has not owned, does not own and shall not acquire, any real property or own assets other than those related to the Property and/or otherwise in furtherance of the limited purposes of the Corporation.

(b) The Corporation at all times shall have an Independent Director (as defined below).

(c) The Corporation:

(i) has not made and shall not make any loans to any Person (including, without limitation, any Affiliate, any Equity Holder or any Affiliate of any Equity Holder, each as defined below);

(ii) except as expressly permitted by Lender in writing shall not sell, encumber (except with respect to Lender) or otherwise transfer or dispose of all or substantially all of its properties (a sale or disposition will be deemed to be "all or substantially all of its properties" 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 its total assets as of the end of the most recently completed fiscal year);

(iii) to the fullest extent permitted by law, it will not seek or effect the liquidation, dissolution, winding up, consolidation or merger with, or acquisition of all or substantially all of the assets of, any other person or entity (whether or not an Affiliate);

(iv) has not changed and shall not change the nature of the business conducted by it;

(v) has not performed and shall not perform, nor shall any Controlling Entity of the Corporation have the authority to cause the Corporation to perform, any act in respect of the Corporation in violation of any (a) applicable laws or regulations or (b) any agreement between the Corporation and Lender; or

(vi) except as permitted by Lender in writing, shall not amend, modify or otherwise change its organizational documents.

(d) Without the prior written affirmative vote of both (1) one hundred percent (100%) of the stockholders of the Corporation, and (2) the Independent Director of the Corporation, the Corporation shall not undertake a Bankruptcy Action.

(e) The Corporation has not incurred and shall have not incur any indebtedness or any liability other than (i) unsecured debts and liabilities for trade payables and accrued expenses incurred in the ordinary course of its business of operating the Property; provided, however, that such unsecured indebtedness or liabilities (A) 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 (B) 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 (ii) the Loan. No indebtedness other than the Loan shall be secured (senior, subordinated or pari passu) by the Property.

(f) The Corporation at all times has observed and shall observe the applicable legal requirements for the recognition of the Corporation as a legal entity separate from any Equity Holder or Affiliates of the Corporation or of any Equity Holder, including, without limitation, as follows:

(i) It (A) has maintained and shall maintain its office, telephone and facsimile numbers separate from that of any Affiliate or of any Equity Holder and has conspicuously identified shall conspicuously identify such office and numbers as its own, or (B) has allocated and shall allocate by written agreement fairly and reasonably any rent, overhead and expenses for shared office space. Additionally, it has used and shall use its own separate stationery, invoices and checks which reflects its name, address, telephone number and facsimile number.

(ii) It has maintained and shall maintain correct and complete financial statements, accounts, books and records and other entity documents separate from those of any Affiliate or any Equity Holder or any other person or entity. It shall prepare unaudited quarterly and annual financial statements and its financial statements shall substantially comply with the requirements set forth in the UBS Loan documents.

(iii) It has conducted and shall conduct business in its own name.

(iv) It has maintained and shall maintain its own separate bank accounts, payroll and correct, complete and separate books of account.

(v) It has filed and shall file or cause to be filed its own separate tax returns, if required to file tax returns.

(vi) It has held and shall hold itself out to the public (including any of its Affiliates' creditors) under its own name and as a separate and distinct entity and not as a department, division or otherwise of any Affiliate or any Equity Holder.

(vii) It has observed and shall observe all customary formalities regarding its existence, including holding meetings and maintaining current and accurate entity record books separate from those of any Affiliate or any Equity Holder.

(viii) It has held and shall hold title to its assets in its own name and act solely in its own name and through its own duly authorized officers and agents. No Affiliate or Equity Holder has been appointed or shall be appointed or act as its agent (except that, with respect to the Corporation, an Affiliate or Equity Holder may serve as property manager with respect to the Property).

(ix) Investments have been and shall be made in its name directly by it or on its behalf by brokers engaged and paid by it.

(x) Except as required by Lender, it has not guaranteed, pledged or assumed or held itself out or permitted itself to be held out, and shall not guarantee, pledge or assume or hold itself out or permit itself to be held out, as having guaranteed, pledged or assumed any liabilities or obligations of any Equity Holder or any Affiliate, nor shall it make any loan, except as permitted in the Loan documents.

(xi) It was solvent as of the date of its formation, has been solvent and remains solvent as of the date hereof, and will not make any distribution or dividend if doing so would cause it not to be solvent on or about the date of such distribution or dividend.

(xii) Its assets have been and shall be separately identified, maintained and segregated. Its assets have been and shall at all times be held by or on behalf of it and, if held on its behalf by another entity, have been and shall at all times be kept identifiable (in accordance with customary usages) as assets owned by it. This restriction requires, among other things, that (A) funds have been and shall be deposited or invested in its name, (B) funds have been and shall not be commingled with the funds of any Affiliate or any Equity Holder, (C) it has and shall maintain all accounts in its own name and with its own tax identification number, separate from those of any Affiliate or any Equity Holder, and (D) its funds have and shall be used only for its business.

(xiii) It has maintained and shall 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 Equity Holder.

(xiv) It has paid or caused to be paid, and shall pay or cause to be paid, its own liabilities and expenses of any kind, including but not limited to salaries of its employees, only out of its own separate funds and assets.

(xv) It 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 (to the extent there exists sufficient cash flow from the Property to do so), and has not made and will not make any distribution or dividend if doing so would cause it not to be adequately capitalized on or about the date of such distribution or dividend.

(xvi) It has not and shall not do any act which would make it impossible to carry on its ordinary business.

(xvii) All data and records (including computer records) used by it or any Affiliate in the collection and administration of any loan have and shall reflect its ownership interest therein.

(xviii) None of its funds have been or shall be invested in securities issued by, nor shall it acquire the indebtedness or obligation of, any Affiliate or any Equity Holder.

(xix) It has maintained and shall maintain an arm's length relationship with each of its Affiliates and Equity Holders, and has entered (if applicable) and may enter into contracts or transact business with its Affiliates or Equity Holders only on commercially reasonable terms that are no less favorable to it than is obtainable in the market from a person or entity that is not an Affiliate or Equity Holder.

(xx) It has corrected and shall correct any misunderstanding that is known to it regarding its name or separate identity.

(g) Any indemnification obligation of the Corporation to any Equity Holder shall (i) be fully subordinated to the Loan, and (ii) not constitute a claim against the Corporation 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 defeased).

(h) To the fullest extent permitted by law, and notwithstanding any duty otherwise existing at law or in equity, the Independent Director shall consider only the interests of this entity, including its creditors, in exercising such person's authority as an Independent Director. Except for duties to the entity in which it is an Independent Director as set forth in the immediately preceding sentence (including duties to creditors solely to the extent of their respective economic interests in the Corporation but excluding (i) all other interests of such entity, (ii) the interest of other Affiliates of such entity, and (iii) the interests of any group of Affiliates of which the entity is a part), the Independent Directors shall not have any fiduciary duties to the entity, any other member or director of

such entity, or to the Corporation or Lender); provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing.

(i) To the fullest extent permitted by law, an Independent Director shall not be liable to the entity in which it serves for breach of contract or breach of duties (including fiduciary duties), unless the Independent Director acted in bad faith or engaged in willful misconduct.

(j) No Independent Director shall resign or be removed or replaced, in each case unless Lender receives not less than five (5) business days' prior written notice of (as) any proposed resignation or removal or replacement of such Independent Director, and (b) the identity of the proposed replacement Independent Director, together with evidence satisfactory to Lender that such replacement satisfies the applicable requirements to be an Independent Director, in each case except for removal of an Independent Director by reason of (y) acts or omissions by such Independent Director that constitute willful disregard of such Independent Director's duties, in accordance with the standards set forth herein, or (z) such Independent Director having engaged in or having been charged with, or having been convicted of, fraud or other acts constituting a crime under any law applicable to such Independent Director, in which case a replacement Independent Director shall be identified and elected or appointed within five (5) business days after the Corporation knew thereof.

(k) The board of directors shall not take any action which requires a unanimous vote of the board of directors unless, at the time of such action, there shall be at least one (1) member of the board of directors who is an Independent Director (and such Independent Director has participated in such vote). Without the unanimous consent of its board of directors, including the consent of the Independent Director, the Corporation shall not (i) file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, (ii) seek or consent to the appointment of a receiver, liquidator or any similar official for such entity or a substantial portion of such entity's assets or properties, (iii) take any action that might cause such entity to become insolvent, (iv) make an assignment for the benefit of creditors, (v) admit in writing such entity's inability to pay its debts generally as they become due, (vi) declare or effectuate a moratorium on the payment of any obligations, or (vii) take any action in furtherance of any of the foregoing. The Independent Director shall consider only the interest of the Corporation, including its creditors.

(l) The Corporation has not permitted and will not permit any Affiliate or Constituent Entity, except for property manager in such capacity and

in accordance with the terms of the property management agreement, independent access to its bank accounts.

(m) Without the unanimous consent of all of its directors (including the Independent Director), as applicable, the Corporation will not (A) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Corporation or for all or any portion of the Corporation's assets or properties, (C) make any assignment for the benefit of the Corporation's creditors, or (D) take any action that might cause the Corporation to become insolvent.

(n) Except in connection with the Loan, the Corporation has not pledged and will not pledge its assets or properties for the benefit of, or to secure the obligations of, any other Person.

(o) The Corporation will not: (i) dissolve, merge, liquidate, consolidate; (ii) sell, transfer, dispose, or encumber (except in accordance with the Loan Documents) all or substantially all of its assets or properties or acquire all or substantially all of the assets or properties of any other Person; or (iii) engage in any other business activity, or amend its organizational documents without the prior consent of Lender in its sole discretion.

(p) The Corporation and Independent Director will consider the interests of the Corporation's creditors in connection with all actions.

(q) The Corporation will not have any of its obligations guaranteed by any Affiliate.

(r) The Corporation will not own or acquire any stock or securities of any Person (except to the extent expressly permitted under the Loan Documents).

(s) The Corporation will not buy or hold evidence of indebtedness issued by any other Person (other than cash or investment-grade securities).



(t) The Corporation will not form, acquire or hold any subsidiary (whether corporation, partnership, limited liability company or other entity), and the Corporation has not owned and will not own any equity interest in any other entity.

(u) The Corporation shall not assume, guarantee or become obligated for the debts or obligations of any other Person and will not hold itself out to be responsible for or have its credit or assets available to satisfy the debts or obligations of any other Person.


**ARTICLE XIII INDEMNIFICATION**

Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Corporation to the contrary, the following shall govern: So long as the mortgage lien in favor of the Lender exists on the Property, any indemnification shall be fully subordinated to any obligations respecting the Property and shall not constitute a claim against the Corporation in the event that cash flow is insufficient to pay such obligations.

2. These Articles of Amendment were approved by Shareholder and Directors Consent to Action of the Corporation dated as of June 5, 2015. The number of votes cast for the amendment by the sole shareholder was sufficient for approval.

The undersigned has executed these Articles of Amendment as of the 5th day of June, 2015. These Articles of Amendment are effective as of June 8, 2015.

**DEERFIELD 21 CORPORATION**

By:   
Name: Cheryl A. Chase  
Title: Executive Vice President