

A97000000246

(Requestor's Name)

(Address)

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(City/State/Zip/Phone #)

☐

PICK-UP

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WAIT

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MAIL

(Business Entity Name)

(Document Number)

Certified Copies _____ Certificates of Status _____

Special Instructions to Filing Officer:

Office Use Only



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STATE
TALLAHASSEE, FLORIDA

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STATE
TALLAHASSEE, FLORIDA

DEPARTMENT OF STATE
ACCOUNT FILING COVER SHEET

Account Number FCA000000017
Reference: _____
(Sub Account)
Date: July 29, 2003
Requestor Name: Carlton Fields
Address: Post Office Drawer 190
Tallahassee, Florida 32302
Telephone: (850) 224-1585
Contact Name: Joan Perrenot (x 243)

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STATE
TALLAHASSEE, FLORIDA

Corporation Name:

RSQ Limited Partnership

Entity Number:

Authorization:

J. Perrenot

☒ Certified Copy	_____ Certificate of Status
☒ New Filings ^{1st Amendment} _{to LP}	_____ Annual Report
_____ Fictitious Name	_____ Registration
_____ Amendments	

(X) Call When Ready

(X) Call if Problem

() After 4:30

(X) Walk In

() Will Wait

(X) Pick Up

CF Internal Use Only

Client: 48063 Matter: 14574

Name: Morrow Office: Tampa

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TALLAHASSEE, FLORIDA
SECRETARY OF STATE

Corporation Name: RSC Limited Partnership
Entity Number: _____
Authorization: J. Perrenot

☒ Certified Copy	_____ Certificate of Status
☒ New Filings ^{1st Amendment to LP}	_____ Annual Report
_____ Fictitious Name	_____ Registration
_____ Plain Stamped Copy	
_____ Amendments	

(X) Call When Ready	(X) Call if Problem	() After 4:30
(X) Walk In	() Will Wait	(X) Pick Up

CF Internal Use Only

Client: 48063 Matter: 14574
Name: Marsaw Office: Tampa

**FIRST AMENDMENT TO
LIMITED PARTNERSHIP AGREEMENT AND CERTIFICATE OF LIMITED
PARTNERSHIP
OF
RSQ LIMITED PARTNERSHIP**

THIS FIRST AMENDMENT TO LIMITED PARTNERSHIP AGREEMENT AND CERTIFICATE OF LIMITED PARTNERSHIP OF RSQ LIMITED PARTNERSHIP (this "First Amendment") is made as of July 24, 2003, by SQUARE MARK, INC., a Virginia corporation (the "General Partner").

RECITALS:

This First Amendment is made with reference to the following facts:

A. The General Partner is the sole general partner of RSQ Limited Partnership, a Florida limited partnership (the "Partnership").

B. The General Partner and the limited partners of the Partnership entered into that certain Limited Partnership Agreement of RSQ Limited Partnership dated as of [undated], 1997 (the "Agreement") and caused that certain Certificate of Limited Partnership of the Partnership to be filed with the Secretary of State of Florida on January 28, 1997 (the "Certificate").

C. In accordance with Article XVII-5(a) of the Agreement the General Partner wishes to amend the Agreement and the Certificate, as provided herein.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties hereto, such parties agree as follows:

1. Recitals; Defined Terms. The foregoing recitals are hereby incorporated by this reference and made a substantive part hereof. Any capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

2. Purpose. Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern:

The nature of the business and of the purposes to be conducted and promoted by the Partnership, is to , is to engage solely in the following activities:

(i) to own, hold, sell, assign, transfer, operate, lease, manage, mortgage, pledge and otherwise deal with that certain parcel of real property, together with all improvements located thereon, located in, Fort Myers, Florida, and commonly known as Royal Palm Shopping Center (the "Property"); and

(ii) to exercise all powers enumerated in the Uniform Limited Partnership Act of Florida incidental, necessary or appropriate to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

3. Certain Prohibited Activities. Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: The Partnership shall only incur indebtedness in an amount necessary to acquire, operate and maintain the Property. For so long as any mortgage lien exists on the Property, the Partnership shall not incur, assume, or guaranty any other indebtedness, except for trade payables in the ordinary course of its business of owning and operating the Property. The Partnership shall not engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, asset sale or transfer of partnership interest. For so long as a mortgage lien exists on the Property, the Partnership will not without the unanimous consent of all of the partners of the Partnership: (i) file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding; institute any proceedings under any applicable insolvency law or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (ii) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for itself or any other entity, (iii) make an assignment of its assets for the benefit of its creditors or an assignment of the assets of another entity for the benefit of such entity's creditors, or (iv) take any action in furtherance of the foregoing. For so long as a mortgage lien exists on the Property, no material amendment to the Agreement or the Certificate may be made without first obtaining approval of the mortgagee holding a first mortgage lien on the Property.

4. Indemnification. Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: Any indemnification shall be fully subordinated to any obligations respecting the Property and shall not constitute a claim against the Partnership in the event that cash flow is insufficient to pay such obligations."

5. Separateness/Operations Matters. Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: For so long as any mortgage lien exists on the Property, in order to preserve and ensure its separate and distinct identity, in addition to the other provisions set forth in the Agreement and the Certificate, the Partnership shall conduct its affairs in accordance with the following provisions:

- (a) It shall establish and maintain an office through which its business shall be conducted separate and apart from that of any of its affiliates and shall allocate fairly and reasonably any overhead for shared office space.
- (b) It shall maintain separate partnership records, books and accounts from those of any affiliate or any other person.
- (c) It shall not commingle funds or assets with those of any affiliate or any other person.
- (d) It shall conduct its business and hold its assets in its own name.

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- (e) It shall maintain financial statements, accounting statements and prepare tax returns separate from any affiliate or any other person.
 - (f) It shall pay any liabilities out of its own funds, including salaries of any employees, not funds of any affiliate, and maintain a sufficient number of employees in light of its contemplated business operations.
 - (g) It shall not make any distributions to its partners which would result in its failing to maintain adequate capital in light of its contemplated business operations.
 - (h) It shall maintain an arm's length relationship with any affiliate.
 - (i) It shall not assume or guarantee or become obligated for the debts of any other entity, including any affiliate, or hold out its credit as being available to satisfy the obligations of others.
 - (j) It shall not have any of its obligations guaranteed by any member, general partner or affiliate, except the guarantor of the mortgage loan.
 - (k) It shall not pledge its assets for the benefit of any other person or entity or make an advance or loan to any person or entity, including any affiliate.
 - (l) It shall not acquire obligations or securities of its partners, members or shareholders or any affiliate.
 - (m) It shall use stationery, invoices and checks separate from any affiliate or any other person.
 - (n) It shall hold itself out as an entity separate and distinct from any affiliate and not as a division, department or part of any other person or entity.
 - (o) It shall not identify its members or any affiliates as a division or part of it.
 - (p) It shall correct any known misunderstanding regarding its separate identity.
 - (q) It shall 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 entity.
 - (r) It shall not share a common logo with any affiliate or any other person.

- (s) It shall not acquire or own any material assets other than the Property and such incidental personal property as may be necessary for the operation of the Property.
- (t) It shall maintain its books, records, resolutions and agreements as official records.
- (u) It shall hold regular meetings, as appropriate, to conduct its business and observe all Partnership level formalities and record keeping.

For purpose of this Paragraph 5, the following terms shall have the following meanings:

(i) "affiliate" means any person controlling or controlled by or under common control with the Partnership including, without limitation (i) any person who has a familial relationship, by blood, marriage or otherwise with any partner or employee of the Partnership, or any affiliate thereof and (ii) any person which receives compensation for administrative, legal or accounting services from this partnership, or any affiliate. For purposes of this definition, "control" when used with respect to any specified person, means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing; and

(ii) "person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

6. Dissolution. Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: The Partnership shall not terminate solely as a consequence of the bankruptcy of one or more of the general partners of the Partnership so long as there remains a solvent general partner of the Partnership. Notwithstanding any provision hereof or of any other document governing the formation, management or operation of the Partnership to the contrary, the following shall govern: Subject to applicable law, dissolution of the Partnership shall not occur so long as the Partnership remains mortgagor of the Property.

7. Principal Place of Business. The principal place of business and mailing address of the Partnership shall be: c/o Stavins and Axelrod Properties, Inc., 1730 Rhode Island Avenue, N.W., Suite 909, Washington, DC 20036.

8. Name and Business Address of General Partner. The name and business address of the sole general partner of the Partnership shall be: Square Mark, Inc., a Virginia corporation, c/o Stavins and Axelrod Properties, Inc., 1730 Rhode Island Avenue, N.W., Suite 909, Washington, DC 20036.

9. General Provisions.

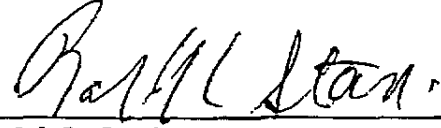
(a) Governing Law. This First Amendment shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Florida (without regard to its laws relating to choice-of-law or conflicts-of-law).

(b) Effective Date. This First Amendment shall become effective upon the date first set forth herein.

(c) Counterparts. This First Amendment may be executed in any number of counterparts and any party hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

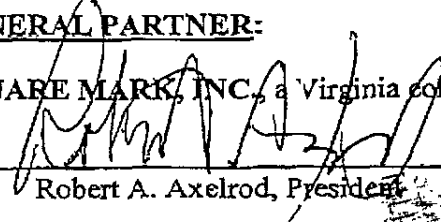
IN WITNESS WHEREOF, the undersigned has caused this First Amendment to be executed and delivered as of the effective date hereinabove provided.

ATTEST:


Ralph L. Stavins, Secretary

GENERAL PARTNER:

SQUARE MARK, INC., a Virginia corporation

By: 

Robert A. Axelrod, President

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