

PD00000089017

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

PICK-UP WAIT MAIL

(Business Entity Name)

(Document Number)

Certified Copies _____ Certificates of Status _____

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JAN 27 2017
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DEPARTMENT OF STATE
ACCOUNT FILING COVER SHEET

Account Number FCA000000017
Date: 1-26-17
Requestor Name: Carlton Fields
Address: Post Office Drawer 190
Tallahassee, Florida 32302
Telephone: (850) 513-3619 - direct
(850) 224-1585
Contact Name: Kim Pullen, CP, FRP

Corporation Name: Royal Oaks Plaza, Inc.

Email Address: _____

Entity Number: P00000089017

Authorization: Kim Pullen

Articles of Amendment
1-26-17
Certified Copy

____ Certificate of Status

____ New Filings

~~Plain Stamped Copy~~

____ Annual Report

____ Fictitious Name

Amendments

____ Registration

(X) Call When Ready

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(X) Walk In

() Will Wait

(X) Pick Up

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Client: 55390 Matter: 26306

Name: M. Ryder Office: MIA

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**ARTICLES OF AMENDMENT TO THE
ARTICLES OF INCORPORATION
OF
ROYAL OAKS PLAZA, INC.**

Pursuant to the provisions of Sections 607.1003 and 607.1006 of the Florida Business Corporation Act (the "Act"), Royal Oaks Plaza, Inc., a Florida corporation (the "Corporation"), adopts the following Articles of Amendment to its Articles of Incorporation:

1. The name of the Corporation is Royal Oaks Plaza, Inc., whose principal office address is 425 W. 41st Street, Miami Beach, Florida 33140.
2. The Articles of Incorporation of the Corporation were filed with the Florida Department of State on September 20, 2000, under Document Number P00000089017, as amended on March 8, 2007 and further amended on March 22, 2007.
3. Article IX and Article X of the Corporation's Articles of Incorporation are hereby deleted in their entirety and replaced to read as follows:

“ **ARTICLE IX – INDEPENDENT DIRECTOR**

(a) At all times which the directors of the Corporation shall take, or shall be required to take, any action in such capacity and until such time as all obligations secured by the Mortgage have been paid in full, there shall be at least one Independent Director. An "Independent Director" shall mean an individual who has prior experience as an independent director, independent manager or independent member with at least three years of employment experience and who is provided by CT Corporation, Corporation Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or, if none of those companies is then providing professional Independent Directors, another nationally-recognized company reasonably approved by Lender, in each case that is not an Affiliate of the Corporation and that provides professional Independent Directors and other corporate services in the ordinary course of its business, and which individual is duly appointed as an Independent Director and is not, and has never been, and will not while serving as Independent Director be, any of the following:

(i) a member, partner, equityholder, manager, director, officer or employee of the Corporation or any of its equityholders or Affiliates (other than as an Independent Director of the Corporation or an Affiliate of the Corporation that is not in the direct chain of ownership of the Corporation and that is required by a creditor to be a single purpose bankruptcy remote entity, provided that such Independent Director is employed by a company that routinely provides professional Independent Directors or managers in the ordinary course of its business);

(ii) a creditor, supplier or service provider (including provider of professional services) to the Corporation or any of its equityholders or Affiliates (other than a nationally-recognized company that routinely provides professional Independent

Directors and other corporate services to the Corporation or any of its Affiliates in the ordinary course of its business);

(iii) a family member of any such member, partner, equityholder, manager, director, officer, employee, creditor, supplier or service provider; or

(iv) a Person that controls (whether directly, indirectly or otherwise) any of (i), (ii) or (iii) above.

A natural person who otherwise satisfies the foregoing definition and satisfies subparagraph (i) by reason of being the Independent Director of a "special purpose entity" affiliated with the Corporation shall be qualified to serve as an Independent Director of the Corporation, provided that the fees that such individual earns from serving as an Independent Director of affiliates of the Corporation in any given year constitute in the aggregate less than five percent (5%) of such individual's annual income for that year. For purposes of this paragraph, a "special purpose entity" is an entity, whose organizational documents contain restrictions on its activities and impose requirements intended to preserve such entity's separateness that are substantially similar to those contained in the definition of Special Purpose Entity set forth in these Articles.

(b) With the consent of the stockholders of the Corporation, which consent the stockholders believe to be in the best interest of the stockholders and the Corporation, no Independent Director shall, with regard to any action to be taken under on in connection with this Article IX, owe a fiduciary duty or other obligation to the stockholders nor to any successor stockholders (except as may specifically be required by the statutory law of any applicable jurisdiction), and every stockholder, including each successor stockholder, shall consent to the foregoing by virtue of such stockholder's purchase of shares of capital stock of the Corporation, no further act or deed of any stockholder being required to evidence such consent. Instead, such directors' fiduciary duty and other obligations with regard to such action under or in connection with this Articles IX shall be owed to the Corporation (including its creditors). In addition, no Independent Director may be removed unless his or her successor has been elected.

(c) As long as any obligations secured by the Mortgage are outstanding, the Corporation shall not take any Bankruptcy Action without the unanimous consent of the Board of Directors including the Independent Director. The Corporation may not take any Bankruptcy Action unless an Independent Director is appointed to the Board of Directors.

ARTICLE X: SPECIAL PURPOSE ENTITY

(a) Notwithstanding any other provisions of these Articles and any provision of law that otherwise empowers the Corporation and so long as any obligations secured by the Mortgage remain outstanding and not discharged in full, the Corporation will remain a Special Purpose Entity.

(b) A "Special Purpose Entity" shall mean a corporation that, since the date of its formation and at all times on and after the date thereof, has complied with and shall at all times comply with the following requirements unless (i) it has received either (A) prior consent to do

otherwise from Lender or a permitted administrative agent thereof, or (B) while the Loan is securitized, a Rating Agency Confirmation from each of the Approved Rating Agencies, and (ii) Lender has received an Additional Insolvency Opinion:

(i) is and shall be organized solely for the purpose of acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Property, entering into and performing its obligations under the Loan Documents with Lender, refinancing the Property in connection with a permitted repayment of the Loan, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(ii) has not engaged and shall not engage in any business unrelated to the acquisition, development, ownership, management or operation of the Property, acting as general partner of the limited partnership that owns the Property or acting as a member of the limited liability company that owns the Property, as applicable;

(iii) has not owned and shall not own any real property other than the Property;

(iv) does not have, shall not have and at no time had any assets other than the Property and personal property necessary or incidental to its ownership and operation of the Property;

(v) has not engaged in, sought, consented to or permitted and shall not engage in, seek, consent to or permit (A) any dissolution, winding up, liquidation, consolidation or merger or (B) any sale or other transfer of all or substantially all of its assets or any sale of assets outside the ordinary course of its business, except as permitted by the Loan Documents;

(vi) shall not cause, consent to or permit any amendment of its limited partnership agreement, certificate of incorporation, articles of organization, certificate of formation, operating agreement or other formation document or organizational document (as applicable) with respect to the matters set forth in this definition;

(vii) intentionally omitted;

(viii) has and shall have at least one (1) Independent Director, and shall not cause or permit the board of directors of such entity to take any Bankruptcy Action either with respect to itself;

(ix) intentionally omitted;

(x) intentionally omitted;

(xi) has not and shall not have a certificate of incorporation or articles, that, in each case, provide that such entity shall not (1) dissolve, merge, liquidate, consolidate; (2) sell all or substantially all of its assets; (3) amend its organizational documents with respect to the matters set forth in this definition without the consent of Lender; or (4) without the affirmative vote of one (1) Independent Director of itself that is a member,

take any Bankruptcy Action;

(xii) has at all times been solvent and has paid and shall pay its debts and liabilities (including, a fairly-allocated portion of any personnel and overhead expenses that it shares with any Affiliate) only from own its assets 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;

(xiii) has not failed and shall not fail to correct any known misunderstanding regarding the separate identity of such entity and has not identified and shall not identify itself as a division of any other Person;

(xiv) has maintained and shall maintain its bank accounts, books of account, books and records separate from those of any other Person and, to the extent that it is required to file tax returns under applicable law, has filed and shall file its own tax returns, except to the extent that it is required (or permitted) by law to file consolidated tax returns;

(xv) has maintained and shall maintain its own records, books, resolutions and agreements;

(xvi) has not commingled and shall not commingle its funds or assets with those of any other Person and has not participated and shall not participate in any cash management system with any other Person;

(xvii) has held and shall hold its assets in its own name;

(xviii) 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 the Corporation, 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;

(xix) (A) has maintained and shall maintain its financial statements, accounting records and other entity documents separate from those of any other Person; (B) has shown and shall show, in its financial statements, its asset and liabilities separate and apart from those of any other Person; and (C) has not permitted and shall not permit its assets to be listed as assets on the financial statement of any of its Affiliates; provided, however, that any such consolidated financial statement contains a note indicating that the Special Purpose Entity's separate assets and credit are not available to pay the debts of such Affiliate and that the Special Purpose Entity's liabilities do not constitute obligations of the consolidated entity;

(xx) has paid and shall pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and shall maintain a sufficient number of employees in light of its contemplated business

operations;

(xxi) has observed and shall observe all partnership, corporate or limited liability company formalities, as applicable;

(xxii) has not incurred any Indebtedness other than (i) acquisition financing with respect to the Property; construction financing with respect to the Improvements and certain off-site improvements required by municipal and other authorities as conditions to the construction of the Improvements; and first mortgage financings secured by the Property; and Indebtedness pursuant to letters of credit, guaranties, interest rate protection agreements and other similar instruments executed and delivered in connection with such financings, (ii) unsecured trade payables and operational debt not evidenced by a note, and (iii) Indebtedness incurred in the financing of equipment and other personal property used on the Property;

(xxiii) shall have no Indebtedness other than (i) the Loan, (ii) liabilities incurred in the ordinary course of business relating to the ownership and operation of the Property and the routine administration of the Corporation, in amounts not to exceed three percent (3%) of the amount of the Loan which liabilities are not more than sixty (60) days past the date incurred, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances, and (iii) such other liabilities that are permitted pursuant to the Loan Agreement;

(xxiv) has not assumed, guaranteed or become obligated and shall not assume or guarantee or become obligated for the debts of any other Person, has not held out and shall not hold out its credit as being available to satisfy the obligations of any other Person or has not pledged and shall not pledge its assets to secure the obligations of any other Person, in each case except as permitted pursuant to the Loan Agreement;

(xxv) has not acquired and shall not acquire obligations or securities of its partners, members or shareholders or any other owner or Affiliate;

(xxvi) has allocated and shall allocate fairly and reasonably any overhead expenses that are shared with any of its Affiliates, constituents, or owners, or any guarantors of any of their respective obligations, or any Affiliate of any of the foregoing, including, but not limited to, paying for shared office space and for services performed by any employee of an Affiliate;

(xxvii) has maintained and used and shall maintain and use separate stationery, invoices and checks bearing its name and not bearing the name of any other entity unless such entity is clearly designated as being the Special Purpose Entity's agent;

(xxviii) has not pledged and shall not pledge its assets to or for the benefit of any other Person other than with respect to loans secured by the Property and no such pledge remains outstanding except to Lender to secure the Loan;

(xxix) has held itself out and identified itself and shall 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 the Corporation and not as a division or part of any other Person;

(xxx) has maintained and shall maintain its assets in such a manner that it shall not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(xxxii) has not made and shall not make loans to any Person and has not held and shall not 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);

(xxxiii) has not identified and shall not identify its partners, members or 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;

(xxxiv) other than the Management Agreement and 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 partners, members, shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable terms, substantially similar to and comparable to those of an arm's-length transaction with an unrelated third party;

(xxxv) has not had and shall not have any obligation to, and has not indemnified and shall not indemnify its partners, officers, directors or members, as the case may be, in each case unless such an obligation or indemnification is fully subordinated to the Debt and to the fullest extent permitted by law shall not constitute a claim against it in the event that its cash flow is insufficient to pay the Debt;

(xxxvi) has considered and shall consider the interests of its creditors in connection with all corporate actions;

(xxxvii) has not had and shall not have any of its debts or obligations guaranteed by any Affiliate except as provided by the Loan Documents;

(xxxviii) has not formed, acquired or held and shall not form, acquire or hold any subsidiary;

(xxxix) has complied and shall comply with all of the terms and provisions contained in its organizational documents;

(xl) has conducted and shall conduct its business so that each of the assumptions made about it and each of the facts stated about it in the Insolvency Opinion, or if applicable, any Additional Insolvency Opinion, are true;

(li) has not permitted and shall not permit any Affiliate or constituent party independent access to its bank accounts;

(xli) is, has always been and shall continue to be duly formed, validly existing, and in good standing in the state of its incorporation or formation and in all other jurisdictions where it is qualified to do business;

(xlii) has paid all taxes which it owes and is not currently involved in any dispute with any taxing authority;

(xliii) is not now, nor has ever been, party to any lawsuit, arbitration, summons, or legal proceeding that resulted in a judgment against it that has not been paid in full;

(xliv) has no judgments or Liens of any nature against it except for tax liens not yet due and the Permitted Encumbrances;

(xlv) has provided Lender with complete financial statements that reflect a fair and accurate view of the entity's financial condition in all material respects; and

(xlvi) has no material contingent or actual obligations not related to the Property."

4. Capitalized terms used in this Amendment (as defined below) and not otherwise defined shall have the following meanings:

"Additional Insolvency Opinion" means a non-consolidation opinion letter delivered in connection with the Loan subsequent to the date of the funding of the Loan reasonably satisfactory in form and substance to Lender and, following a Securitization, satisfactory in form and substance to the Approved Rating Agencies, and from counsel acceptable to Lender and, following a Securitization, the Approved Rating Agencies.

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person or is a director or officer of such Person or of an Affiliate of such Person

"Approved Rating Agencies" means each of S&P, Moody's, Fitch and Morningstar or any other nationally-recognized statistical rating agency which has been approved by Lender and designated by Lender to assign a rating to the Securities.

"Bankruptcy Action" means with respect to any Person (a) such Person filing a voluntary petition under the Bankruptcy Code or any other Federal, state, local or foreign bankruptcy or insolvency law; (b) the filing of an involuntary petition against such Person under the Bankruptcy Code or any other Federal, state, local or foreign bankruptcy or insolvency law or soliciting or causing to be solicited petitioning creditors for any involuntary petition against such person; (c) such Person filing an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other Federal or state bankruptcy or insolvency law; (d) such Person consenting to or acquiescing in or joining in an application for the appointment of a custodian, receiver, trustee, or examiner for such Person or any portion of the Property; (e) such Person making an assignment for the benefit of creditors, or admitting, in writing or in any legal proceeding, its

insolvency or inability to pay its debts as they become due or (f) to take action in furtherance of any of the foregoing.

“Bankruptcy Code” shall mean Title 11 of the United States Code, 11 U.S.C. §101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other Federal, state, local or foreign bankruptcy or insolvency law

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise. “Controlled” and “Controlling” shall have correlative meanings

“Debt” means the outstanding principal amount set forth in, and evidenced by, the Loan Agreement and the Note together with all interest accrued and unpaid thereon and all other sums due to Lender in respect of the Loan under the Note, the Loan Agreement, the Mortgage or any other Loan Document.

“Governmental Authority” means any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (foreign, federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

“Improvements” has the meaning set forth in the granting clause of the Mortgage.

“Indebtedness” of a Person, at a particular date, shall mean the sum (without duplication) at such date of (a) all indebtedness or liability of such Person (including, without limitation, amounts for borrowed money and indebtedness in the form of mezzanine debt or preferred equity); (b) obligations evidenced by bonds, debentures, notes, or other similar instruments; (c) obligations for the deferred purchase price of property or services (including trade obligations); (d) obligations under letters of credit; (e) obligations under acceptance facilities; (f) all guaranties, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations to purchase, to provide funds for payment, to supply funds, to invest in any Person or entity, or otherwise to assure a creditor against loss; (g) obligations under PACE Loans and (h) obligations secured by any Liens, whether or not the obligations have been assumed (other than the Permitted Encumbrances).

“Insolvency Opinion” means that certain non-consolidation opinion letter dated the date of the Loan Agreement delivered by O’Halloran Ryan PLLC in connection with the Loan.

“Lender” means JPMorgan Chase Bank, National Association, a banking association chartered under the laws of the United States of America, together with its successors and assigns.

“Lien” any mortgage, deed of trust, deed to secure debt, indemnity deed of trust, lien, pledge, hypothecation, assignment, security interest, PACE Loan or any other encumbrance,

charge or transfer of, on or affecting the Corporation, the Property, any portion thereof or any interest therein, including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement, and mechanic's, materialmen's and other similar liens and encumbrances but excluding any and mechanic's, materialmen's and other similar liens and encumbrances resulting from any action or inaction of any lessee of all or a portion of the Property which does not constitute a legal lien against the Property.

"Loan" means the loan made by Lender to the Corporation pursuant to the Loan Agreement.

"Loan Agreement" means that certain loan agreement, dated as of [February 1, 2017] (as amended, restated, replaced, supplemented or otherwise modified from time to time), between Lender and the Corporation.

"Loan Documents" means, collectively, the Loan Agreement, the Note, the Mortgage, an environmental indemnity agreement, an assignment of Management Agreement, a guaranty, a lockbox agreement, a cash management agreement, and all other documents executed and/or delivered in connection with the Loan.

"Management Agreement" means shall mean the management agreement entered into by and between the Corporation and Rimmon Management LLC, a Florida limited liability company, pursuant to which Rimmon Management LLC is to provide management and other services with respect to the Property.

"Mortgage" means that certain first priority Amended and Restated Mortgage, Assignment of Leases and Rents and Security Agreement, dated the date of the Loan Agreement, executed and delivered by the Corporation to Lender as security for the Loan and encumbering the Property, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Note" means mean that certain Amended and Restated Promissory Note, dated the date of the Loan Agreement, in the principal amount of \$30,000,000.00, made by the Corporation in favor of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"PACE Loans" means (x) any "Property-Assessed Clean Energy loan" or (y) any other indebtedness, without regard to the name given to such indebtedness, which is (i) incurred for improvements to the Property for the purpose of increasing energy efficiency, increasing use of renewable energy sources, resource conservation, or a combination of the foregoing, and (ii) repaid through multi-year assessments against the Property.

"Permitted Encumbrances" means shall mean, with respect to the Property, collectively, (a) the Liens and security interests created by the Loan Documents, (b) all Liens, encumbrances and other matters disclosed in the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority not yet due or delinquent, and (d) such other title

and survey exceptions as Lender has approved or may approve in writing in Lender's sole discretion, which Permitted Encumbrances in the aggregate do not materially adversely affect the value or use of the Property or the Corporation's ability to repay the Loan.

"Person" means mean any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Property" means the parcel of real property, the Improvements thereon and all personal property owned by the Corporation and encumbered by the Mortgage, together with all rights pertaining to such property and Improvements, as more particularly described in the granting clauses of the Mortgage and referred to therein as the "Property."

"Rating Agency Confirmation" means, collectively, a written affirmation from each of the Approved Rating Agencies that the credit rating of the Securities given by such Approved Rating Agency of such Securities immediately prior to the occurrence of the event with respect to which such Rating Agency Confirmation is sought will not be qualified, downgraded or withdrawn as a result of the occurrence of such event, which affirmation may be granted or withheld in such Approved Rating Agency's sole and absolute discretion. In the event that, at any given time, no Approved Rating Agency has elected to consider whether to grant or withhold such an affirmation and Lender does not otherwise have an approval right with respect to such event, then the term Rating Agency Confirmation shall be deemed instead to require the written reasonable approval of Lender based on its good faith determination of whether the Approved Rating Agencies would issue a Rating Agency Confirmation, provided that the foregoing shall be inapplicable in any case in which Lender has an independent approval right in respect of the matter at issue pursuant to the terms of the Loan Agreement.

"Securities" has the meaning set forth in Section 9.1 of the Loan Agreement.

"Securitization" has the meaning set forth in Section 9.1 of the Loan Agreement.

"Taxes" means all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against the Property or part thereof.

"Title Insurance Policy" means the mortgagee title insurance policy issued with respect to the Property and insuring the lien of the Mortgage.

5. This amendment to the Articles of Incorporation of the Corporation (the "Amendment") was adopted on the 25th day of January, 2017.

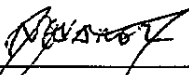
6. Pursuant to the provisions of Section 607.0821 and Section 607.0704 of the Act, the Board of Directors and the sole Shareholder of the Corporation duly approved and adopted the Amendment through a joint written action taken by the unanimous written consent of the sole Shareholder and Board of Directors, effective January 25, 2017.

Accordingly, the Amendment has been authorized by all appropriate action under the Act.

Signature on following page.

These Articles of Amendment are hereby dated this 25th day of January, 2017.

ROYAL OAKS PLAZA, INC.

By: 

Ricardo A. Nevarez, President