

P14 0000033791

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

☐ PICK-UP

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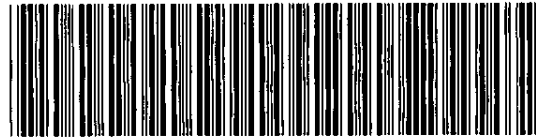
(Business Entity Name)

(Document Number)

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CORPORATION SERVICE COMPANY

ACCOUNT NO. : I20000000195

REFERENCE : 180029 9384A

AUTHORIZATION :

COST LIMIT : \$ 52.50

ORDER DATE : June 17, 2014

ORDER TIME : 1:54 PM

ORDER NO. : 180029-005

CUSTOMER NO: 9384A

DOMESTIC AMENDMENT FILING

NAME: ESPLANADE CENTER, INC

EFFECTIVE DATE:

XX ARTICLES OF AMENDMENT
 RESTATED ARTICLES OF INCORPORATION

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY
 PLAIN STAMPED COPY
XX CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Emily Gray -- EXT# 62925

EXAMINER'S INITIALS:

10

COVER LETTER

TO: Amendment Section
Division of Corporations

NAME OF CORPORATION: ESPLANADE CENTER, INC

DOCUMENT NUMBER: P14000033791

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

Please return all correspondence concerning this matter to the following:

Daniel J. Halberstein

Name of Contact Person

Esplanade Center, Inc

Firm/ Company

18205 Biscayne Blvd., S-2202

Address

Aventura, FL 33160

City/ State and Zip Code

dhalberstein@triarchcap.com

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Daniel J. Halberstein

Name of Contact Person

at (305) 933-1060

Area Code & Daytime Telephone Number

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

☐ \$35 Filing Fee

☐ \$43.75 Filing Fee &
Certificate of Status

☐ \$43.75 Filing Fee &
Certified Copy
(Additional copy is
enclosed)

☒ \$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
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

Articles of Amendment
to
Articles of Incorporation
of

ESPLANADE CENTER, INC

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

P14000033791

(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:

N/A

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)

N/A

C. Enter new mailing address, if applicable:

(Mailing address MAY BE A POST OFFICE BOX)

N/A

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

N/A

(Florida street address)

New Registered Office Address:

N/A

(City)

Florida

(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

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:

X Change PT John Doe

X Remove V Mike Jones

X Add SV Sally Smith

Type of Action (Check One)	Title	Name	Address
1) <input type="checkbox"/> Change	<u>SD</u>	<u>JAIME HALBERSTEIN</u>	<u>18205 Biscayne Blvd.</u>
<input checked="" type="checkbox"/> Add			<u>S-2202</u>
<input type="checkbox"/> Remove			<u>Aventura, FL 33160</u>
2) <input type="checkbox"/> Change	<u>V</u>	<u>GARY MARS</u>	<u>18205 Biscayne Blvd.</u>
<input checked="" type="checkbox"/> Add			<u>S-2202</u>
<input type="checkbox"/> Remove			<u>Aventura, FL 33160</u>
3) <input checked="" type="checkbox"/> Change	<u>PTD</u>	<u>DANIEL J. HALBERSTEIN</u>	<u>18205 Biscayne Blvd.</u>
<input type="checkbox"/> Add			<u>S-2202</u>
<input type="checkbox"/> Remove			<u>Aventura, FL 33160</u>
4) <input type="checkbox"/> Change	<u>D</u>	<u>MARY ALICE AVERY</u>	<u>c/o Wilmington Trust</u>
<input checked="" type="checkbox"/> Add			<u>Rodney Square North</u>
<input type="checkbox"/> Remove			<u>1100 North Market Street</u>
5) <input type="checkbox"/> Change			<u>Wilmington, DE 19890</u>
<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)

Article IX (see attached)

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)

N/A

Article IX

(a) Notwithstanding anything to the contrary contained herein, for so long as that certain first mortgage loan ("Loan") made by Rialto Mortgage Finance, LLC (together with its successors and/or assigns "Lender") to Esplanade Capital, LLC, a Florida limited liability company ("Borrower"), pursuant to that certain Loan Agreement (the "Loan Agreement") by and between Borrower and Lender, remains outstanding, in the event of any conflict between the provisions contained in this Section and the other provisions of these Articles, the provisions of this Section shall control and govern. All capitalized terms within this Section shall have the meaning ascribed to them in the Loan Agreement.

(b) Esplanade Center, Inc, a Florida corporation ("Company"), has not, and for so long as the Loan shall remain outstanding, will not:

(i) engage in any business or activity other than owning its membership interest in and acting as manager of Esplanade Capital, LLC;

(ii) acquire or own any assets other than its membership interest in Esplanade Capital, LLC;

(iii) engage in, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, sale of all or substantially all of its assets;

(iv) fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation and will not without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of its Organizational Documents, or consent to or suffer the amendment, modification, termination or breach of any of the Organizational Documents;

(v) own any subsidiary or make any investment in, any person or entity;

(vi) commingle its assets with the assets of any of its general partners, managing members, shareholders, Affiliates, principals or of any other person or entity;

(vii) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligations);

(viii) fail to maintain its financial statements, accounting records, bank accounts and other entity documents separate and apart from those of the partners, members, shareholders, principals and Affiliates of such entity, and will not permit its assets to be listed as assets on the financial statement of any other entity except that such entity's financial position, assets, results of operations and cash flows may be included in the consolidated financial statements of an Affiliate of such entity in accordance with GAAP; provided, however, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity;

(ix) enter into or be a party to any contract or agreement with any general partner, managing member, shareholder, principal or Affiliate of Borrower, any Guarantor, or any general partner, managing member, shareholder, principal or Affiliate thereof, 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 third parties;

(x) 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;

(xi) make any loans to any third party;

(xii) fail to hold itself out and identify itself to the public as a legal entity separate and distinct from any other Person;

(xiii) fail to conduct its business solely in its own name in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that such entity is responsible for the debts of any third party;

(xiv) fail to endeavor to remain solvent and pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due;

(xv) fail to endeavor 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;

(xvi) fail to file its own tax returns, if any, as may be required under applicable law, to the extent such entity is (1) not part of a consolidated group filing a consolidated return or returns or (2) not treated as a division solely for tax purposes of another taxpayer, and has paid and will pay any taxes so required to be paid under applicable law;

(xvii) fail to allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate;

(xviii) fail to maintain a sufficient number of employees, if any, in light of its contemplated business operations and pay the salaries of its own employees from its own funds;

(xix) fail to correct any known misunderstanding regarding the separate identity of such entity;

(xx) fail to hold its assets in its own name and has conducted and will conduct its business in its own name;

(xxi) fail to pay its own liabilities and expenses;

(xxii) fail to observe all corporate, limited liability company or limited partnership formalities, as applicable;

(xxiii) assume or guarantee or become obligated for the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person;

(xxiv) acquire obligations or securities of its partners, members or shareholders or any other Affiliate;

(xxv) fail to maintain and use separate stationery, invoices and checks bearing its name;

(xxvi) pledge its assets for the benefit of any other Person;

(xxvii) have any obligation to, and will not, indemnify its partners, officers, directors or members, as the case may be, unless such an obligation is fully subordinated to the Debt and will not

constitute a claim against it in the event that cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation;

(xxviii) have any of its obligations guaranteed by any Affiliate of such entity;

(xxix) fail to comply with all of the terms and provisions contained in its Organizational Documents;

(xxx) fail to continue to act in a manner to make the statement of facts contained in its Organizational Documents true and correct;

(xxxi) fail to continue to consider the interests of its creditors in connection with all actions;

(xxxii) fail to have as of the date hereof or continue to have at least the Required Number of Independent Directors, each of which shall be a duly appointed Independent Director (hereinafter defined), and has not caused or allowed and will not cause or allow the board of directors of such entity to take any action requiring the unanimous affirmative vote of one hundred percent (100%) of the members of its board of directors unless each Independent Director shall have participated in such vote;

(xxxiii) fail to have its Organizational Documents from and after the date hereof provide that such entity will not (and such entity agrees that it will not), without the unanimous consent of its board of directors or managers, including the consent of each Independent Director (A) 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, (B) seek or consent to the appointment of a receiver, liquidator or any similar official for such entity or a substantial portion of its assets or properties, (C) take any action that might cause such entity to become insolvent, (D) make an assignment for the benefit of creditors, (E) admit in writing such entity's inability to pay its debts generally as they become due, (F) declare or effectuate a moratorium on the payment of any obligations, or (G) take any action in furtherance of any of the foregoing. In addition, the Organizational Documents of such entity shall provide that, when voting with respect to any of the matters set forth in the immediately preceding sentence of this definition each Independent Director shall consider only the interests of such entity, including its creditors; and

(xxxiv) fail to have its Organizational Documents provide an express acknowledgment that Lender is an intended third-party beneficiary of the "special purpose" and "separateness" provisions of such Organizational Documents.

As used herein, the term "**Independent Director**" shall mean an individual who (i) has at least three (3) years prior employment experience and continues to be employed as an independent director, independent manager or independent member 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, independent managers and independent members, another nationally-recognized company that provides such services and which is reasonably approved by Lender; (ii) is not on the board of directors or managers of more than two (2) Affiliates of the related Single Purpose Entity; and (iii) is not, and has never been, and will not, while serving as an Independent Director, be, any of the following: (A) a stockholder, director, manager, officer, employee, partner, member; attorney or counsel of such entity,

any Affiliate of such entity or any direct or indirect equity holder of any of them, (B) a creditor, customer, supplier, service provider (including provider of professional services) or other Person who derives any of its purchases or revenues from its activities with such entity or any Affiliate of such entity (other than a nationally-recognized company that routinely provides professional independent directors, independent managers or independent members and other corporate services to such entity or any Affiliate of such entity in the ordinary course of its business), (C) a member of the immediate family of any such stockholder, director, manager, officer, employee, partner, member, creditor, customer, supplier, service provider or other Person, or (D) a Person controlling or under common control with any of (A), (B) or (C) above. A natural person who satisfies the foregoing definition other than clause (iii)(A) or (iii)(B) shall not be disqualified as a result of clause (iii)(A) or (iii)(B) by reason of (I) being an Independent Director, or having been or becoming an Independent Director of, an Affiliate of such entity that is not in the chain of ownership of such entity and that is required by a creditor to be a "single purpose entity" or (II) being, having been or becoming a member of such entity pursuant to an express provision in such entity's operating agreement providing for the appointment of such Independent Director as a member of such entity upon the occurrence of any event pursuant to which Sole Member ceases to be a member of such entity (including the withdrawal or dissolution of Sole Member); provided that, in the case of (I) and (II) above, such Independent Director has and/or will at all times be employed by a company that routinely provides professional independent directors, independent managers or independent members and the fees or other compensation that such individual earns by serving as an Independent Director of one or more Affiliates of such entity in any given year constitute, in the aggregate, less than five percent (5%) of such individual's income for such year.

The date of each amendment(s) adoption: _____, if other than the date this document was signed.

Effective date if applicable: Date of filing
(no more than 90 days after amendment file date)

Adoption of Amendment(s) (CHECK ONE)

- ☒ 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)

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

- ☐ The amendment(s) was/were adopted by the incorporators without shareholder action and shareholder action was not required.

Dated June 16, 2014

Signature [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)

Daniel J. Halberstein

(Typed or printed name of person signing)

President

(Title of person signing)