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FLORIDA PROFIT/NON PROFIT CORPORATION
Flagler West Corporate Mezzanine Manager, Inc.

Certificate of Status	1
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*Valerie.Herring
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December 2, 2014

FLORIDA DEPARTMENT OF STATE
Division of Corporations

RITTER ZARETSKY, ET.AL.

SUBJECT: FLAGLER WEST CORPORATE MEZZANINE MANAGER, INC.
REF: W14000071698

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLES OF INCORPORATION

OF

FLAGLER WEST CORPORATE MEZZANINE MANAGER, INC.

(A Florida Profit Corporation)

The undersigned Incorporator, for the purposes of forming a for profit corporation pursuant to Chapter 607, Florida Statutes (the Florida Business Corporations Act), does hereby make, adopt and file these Articles of Incorporation.

ARTICLE I

NAME

The name of the Corporation is: "FLAGLER WEST CORPORATE MEZZANINE MANAGER, INC."

ARTICLE II

EFFECTIVE DATE

The effective date of the formation of this Corporation is December 1, 2014.

ARTICLE III

INCORPORATOR'S NAME

The name and address of the Incorporator of this Corporation is:

Joseph Spitzer
c/o 2915 Biscayne Blvd.,
Suite 300
Miami, FL 33137

ARTICLE IV

PRINCIPAL OFFICE/MAILING ADDRESS

The street address and mailing address of the Corporation's principal office in the State of Florida is:

2915 Biscayne Blvd.,
Suite 300
Miami, FL 33137

**ARTICLE V
REGISTERED AGENT NAME AND ADDRESS**

The name and address of the Corporation's registered agent to receive service of process is:

Ritter, Zaretsky, Lieber & Jaime, LLP
2915 Biscayne Blvd.
Suite 300
Miami, FL 33137

**ARTICLE VI
PURPOSE**

The purpose of the Corporation shall be limited to serving as the sole manager and member of *Flagler West Corporate Mezzanine, LLC*, a Florida limited liability company (the "Company"), and activities incidental thereto. So long as any indebtedness of the Company incurred in favor of Ladder Capital Finance LLC or its successors and assigns ("Lender") ("Lender Indebtedness") shall remain outstanding, the Corporation shall be prohibited from (A) engaging in any business or activity other than owning an interest in the Company and acting as the manager and member of the Company, (B) owning any asset or property other than its interests interest in the Company and incidental personal property necessary for the ownership of such interest, *an/or (C) incurring indebtedness of any kind, secured or unsecured, direct or contingent (including guaranteeing any obligation) other than unsecured trade payable incurred in the ordinary course of business related to the ownership of its interest in the Company and provided such unsecured trade payables (i) do not exceed any one time \$10,000, and (ii) are paid within thirty (30) days after the date incurred.* Capitalized terms used herein but not otherwise defined shall have the meaning set forth in the *Mezzanine Loan Agreement between Company and Lender.*

**ARTICLE VII
INDEPENDENT DIRECTOR**

So long as any Lender Indebtedness shall remain outstanding, the Board of Directors of the Corporation shall include at least one Independent Director, and no Independent Director may resign or be removed or replaced except and unless the Corporation shall have provided Lender with not less than fifteen (15) days prior notice of such resignation, removal or replacement, together with a statement as to the *reasons for such resignation, removal or replacement and the identity of the proposed*

replacement Independent Director, together with a certification that such replacement satisfies the requirements for an Independent Director set forth herein relating to an Independent Director; provided further no resignation nor removal of an Independent Director, and no appointment of a successor Independent Director, shall be effective until such successor shall have executed a counterpart of these Articles of Incorporation in the Independent Director Acknowledgement block set forth below. Notwithstanding anything to the contrary, in the event there shall occur a vacancy in the position of Independent Director, the stockholders of the Corporation shall, subject to the immediately preceding sentence, appoint a successor Independent Director as soon as practicable. As used herein, the term "independent Director" shall mean a natural person who (A) is provided to the Corporation by, has at least three (3) years prior experience being employed by, and continues to be employed by, a nationally recognized professional service company (hereafter defined) as an independent director, independent manager or independent member, and (B) is not, and has never been, and will not be while serving as an Independent Director of the Corporation, any of the following: (i) a stockholder, director, member, manager, officer, employee, partner, attorney or counsel of the Corporation or the Company or any affiliate of the Corporation or the Company; (ii) a supplier, service provider, creditor, customer or other person who derives revenues or purchases from its activities with the Corporation or the Company or any affiliate of the Corporation or the Company; (iii) a member of the immediate family or, or an officer or employee of, or a direct or indirect interest holder or equity holder of, or person otherwise affiliated with the Corporation or the Company, or any Affiliate of the Corporation or the Company, or any stockholder, director, member, manager, officer, employee, partner, attorney, counsel, supplier service provider, creditor, customer or other Person as described in the (i) and(ii) above, or (iv) a Person controlling, controlled by or under common control with any of the foregoing described in (i), (ii) or (iii) above; provided, however, and notwithstanding anything to the contrary, no individual shall be disqualified as an Independent Director solely as a consequence of his or her having served, currently serving or hereafter serving as an Independent director, independent member or independent manager of any Affiliate of the Company or the Corporation, but in no event shall the Independent Director also act as the Independent Director of Flagler West Corporate Manager, Inc., a Florida corporation. As used in this Article, a "nationally recognized professional service company" includes Corporation Services Company, CT Corporation, National Registered Agents, Stewart Management Company, Wilmington Trust Company and 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 Borrower and that provides professional independent directors, independent managers and independent member in the ordinary course of business. As used herein, the term "Person" shall 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. As used herein, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise and the term "controlled" and "controlling" shall have a correlative meaning.

ARTICLE VIII INTERNAL AFFAIRS

So long as any Lender Indebtedness shall remain outstanding, the following provisions regulate the internal affairs of the Corporation:

1. A unanimous vote of the Board of Directors, including the Independent Director, is required to take or cause the Company to take any of the following actions:
 - (a) causing the Corporation or the Company to become insolvent;
 - (b) commencing any case, proceeding or other action on behalf of the Corporation or the Company under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief of debtors;
 - (c) institute proceedings to have the Corporation or the Company adjudicated as bankruptcy or insolvent;
 - (d) consenting to the institution of bankruptcy or insolvency proceedings against the Corporation or the Company;
 - (e) filing a petition or consent to a petition seeking reorganization, arrangement, adjustment, winding-up, dissolution, composition, liquidation or other relief on behalf of the Corporation or the Company of its debts under any federal, state local or foreign law relating to bankruptcy;
 - (f) seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequester, custodian or any similar official for the corporation or the Company or a substantial portion of the properties of the Corporation or the Company;
 - (g) making any assignment for the benefit of the Corporation's or the Company's creditors;
 - (h) admit in writing the Corporation's or the Company's inability to pay its debts generally as they become due;
 - (i) declare or effectuate a moratorium on the payment of any of the Corporation's or the Company's obligations;

- (j) taking any acting or causing the Corporation or the Company to take any action in furtherance of any of the following; or
 - (k) amend these Articles of Incorporation.
2. The Corporation shall not do any of the following without the consent of Lender and with respect to (a) below, unless the Rating Agencies shall have issued a Rating Agency Confirmation with respect thereto:
- (a) amend these Articles of Incorporation;
 - (b) engage in any business activity other than as set forth in this Article VI;
 - (c) withdraw as the sole manager of the Company;
 - (d) dissolve, liquidate, consolidate, merge, or sell all or substantially all of the Corporation's assets or cause the Company to dissolve, liquidate, consolidate, merge, or sell all or substantially all of its assets;
 - (e) transfer its interest or a portion thereof in the Company; or
 - (f) upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against the Corporation or the Company, seek a supplemental stay or otherwise pursuant to Section 105 or any other provision of Title 11, United States Code, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of lender against any guarantor or indemnity of the secured obligations or any other party liable with respect thereto by virtue of any indemnity, guaranty or otherwise.
3. The Corporation shall, and the Corporation shall require the Company to:
- (a) not enter into or be a party to any contract or agreement with any affiliate of the Company or the Corporation, any constituent party of the Company or the Corporation or any affiliate of any constituent party, except in the ordinary course of business and on terms and conditions that are disclosed to Lender in advance and that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

- (b) not make any loans or advances to any Person (including any Affiliate or constituent party), and has not acquired and shall not acquire obligations or securities of its affiliates.
- (c) remain solvent and will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from Net Operating Income and available Reserve Funds, as the same shall become due; provided, however, that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to the Corporation.
- (d) do all things necessary to observe organizational formalities and preserve its existence, and will not, nor will the Corporation permit the Company to, terminate or fail to comply with the provisions of its organizational documents.
- (e) maintain all of its accounts, books, records, financial statements and bank accounts separate from those of its Affiliates and any other Person.
- (f) not have its assets 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 if (i) 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 (ii) such assets shall be listed on the Corporation's own separate balance sheet.
- (g) file its own tax returns (to the extent the Corporation is required to file any such tax returns) and will not file a consolidated federal income tax return with any other Person.
- (h) maintain its books, records, resolutions and agreements as official records.

- (i) be and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate of the Corporation or any constituent party of the Corporation), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its Affiliates as a division or part of the other, and shall maintain and utilize separate stationery, invoices and checks bearing its own name.
- (j) intend 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; provided, however, that the foregoing shall not require any direct or indirect member, partner or shareholder of the Corporation to make any additional capital contributions to the Corporation.
- (k) not nor shall any constituent party seek or effect the liquidation, dissolution, winding up, consolidation or merger, in whole or in part, of the Corporation.
- (l) not commingle the funds and other assets of Borrower with those of any Affiliate or constituent party or any other Person, and will hold all of its assets in its own name.
- (m) 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 Affiliate or constituent party or any other Person.
- (n) not assume or guarantee or become obligated for the debts of any other Person and does not and will not hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other Person.
- (o) conduct and shall cause the Company to conduct its respective business so that the assumptions made with respect to the Corporation and the Company in any *Insolvency Opinion* delivered in connection with the Loan shall be true and correct in all respects and, to the extent that an *Insolvency Opinion* has previously been delivered in connection with the Loan. In

connection with the foregoing, the Corporation will comply with or and will cause the Company to comply with, (i) all of the facts and assumptions- (whether regarding the Corporation and the Company) set forth in any Insolvency Opinion delivered in connection with the Loan, (ii) all the representations, warranties and covenants in Sections 3.1.24 and 4.1.15 and Schedule III of the Mezzanine Loan Agreement, and (iii) all the organizational documents of the Corporation and the Company.

- (p) not permit any Affiliate or constituent party independent access to its bank accounts.
- (q) pay the salaries of its own employees (if any) from its own funds and shall maintain a sufficient number of employees (if any) in light of its contemplated business operations; provided, however, that the foregoing shall not require any direct or indirect member, partner or shareholder of the Corporation to make any additional capital contributions to the Corporation.
- (r) compensate each of its consultants and agents from its funds for services provided to it and pay from its own assets all obligations of any kind incurred; provided, however, that the foregoing shall not require any direct or indirect member, partner or shareholder of the Corporation to make any additional capital contributions to the Corporation.
- (s) allocate fairly and reasonably any shared expenses, including shared office space.
- (t) not pledge its assets for the benefit of any other Person.
- (u) not have any of its obligations guaranteed by any Affiliate.

ARTICLE IX STOCK

The total number of shares which the Corporation shall have authority to issue is 100 shares of Common Stock, par value \$0.01 per share. The sole stockholder of the corporation shall be JOSEPH SPITZER ("Stockholder").

**ARTICLE X
DIRECTORS AND OFFICERS**

Except as provided and required by Article VIII, the Stockholder is authorized to appoint and remove directors and officers of the Corporation in accordance with Chapter 607, Florida Statutes.

**ARTICLE XI
BY-LAWS**

The Stockholder is expressly authorized to adopt, amend, or repeal by-laws of the Corporation; provided, no such by-law shall contradict or supersede the rights, requirements and obligations set forth in these Articles of Incorporation.

**ARTICLE XII
DIRECTORS AND OFFICER DUTIES AND LIABILITY**

Each Independent Director, when voting with respect to any of the matters set forth in these Articles of Incorporation or otherwise exercising his or her rights or performing his or her duties under these Articles of Incorporation and the Corporation's other governing documents, (i) shall, to the fullest extent permitted by law and notwithstanding any duty existing at law of equity, consider only the interests of the Company, including Lender and the Company's other creditors (and excluding all other interests of the Corporation and all the interests of all other affiliates of the Corporation or the Company), and (ii) subject to the immediately preceding clause (i), shall have a fiduciary duty of loyalty and care as provided for a director of a business corporation organized under Chapter 607, Florida Statutes, as same may be amended. Each director or officer of the Corporation that is not an Independent Director, in exercising his or her rights and performing his or her duties under these Articles of Incorporation and the Corporation's other governing documents, shall have a fiduciary duty of loyalty and care as imposed by the Florida Business Corporation Act, as same may be amended; provided, to the fullest extent permitted by law, no director or officer of the Corporation that is not an Independent Director shall be personally liable to the Corporation or its stockholders for any monetary damages resulting from any breach of such fiduciary duty of loyalty and care. Any repeal or modification of this Article shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of such repeal or modification.

**ARTICLE XII
INDEMNIFICATION CLAIMS**

So long as any Lender Indebtedness shall remain outstanding, any and all Corporation obligations to indemnify its directors and officers shall be fully subordinate to the Lender indebtedness and shall not constitute a claim against the Corporation.

IN WITNESS WHEREOF, I hereunto set my hand this 1st day of December, 2014, and I affirm that the facts stated herein are true.



JOSEPH SPITZER, Incorporator

APPROVAL
AND
FILED

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ACCEPTANCE OF APPOINTMENT OF REGISTERED AGENT

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

The undersigned, having been named as Registered Agent and to ~~accept service of process~~ process for FLAGLER WEST CORPORATE MEZZANINE MANAGER, INC., a Florida corporation, at the place designated in these Articles of Incorporation, hereby accepts the appointment as registered agent and agrees to act in this capacity. The undersigned further agrees to comply with the provisions of all statutes relating to the proper and complete performance of its duties and is familiar with, and accepts, the obligations of its position as registered agent as provided for in Section 607.0505, Florida Statutes.

RITTER, ZARETSKY, LIEBER & JAIME, LLP

By: 

Vivian A. Jaime, Esq., its Partner for the
firm

Date: 12-1-2014