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COR AMND/RESTATE/CORRECT OR O/D RESIGN

RCK FLAGLER, INC.

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COVER LETTER

TO: Amendment Section
Division of Corporations

NAME OF CORPORATION: RCK FLAGLER, INC.

DOCUMENT NUMBER: P97000015407

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

Please return all correspondence concerning this matter to the following:

Ms. Taube Ponce
(Name of Contact Person)

Foltz Martin, LLC
(Firm/ Company)

3525 Piedmont Road, Ste. 750
(Address)

Atlanta, GA 30305
(City/ State and Zip Code)

For further information concerning this matter, please call:

Ms. Taube Ponce at (404) 231-9397
(Name of Contact Person) (Area Code & Daytime Telephone Number)

Enclosed is a check for the following amount:

- | | | | |
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| <input type="checkbox"/> \$35 Filing Fee | <input type="checkbox"/> \$43.75 Filing Fee & Certificate of Status | <input type="checkbox"/> \$43.75 Filing Fee & Certified Copy (Additional copy is enclosed) | <input type="checkbox"/> \$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

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Articles of Amendment
to
Articles of Incorporation
of

RCK FLAGLER, INC.

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

P97000015407

(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:

NEW CORPORATE NAME (if changing):

(Must contain the word "corporation," "company," or "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.")
(A professional corporation must contain the word "chartered", "professional association," or the abbreviation "P.A.")

AMENDMENTS ADOPTED- (OTHER THAN NAME CHANGE) Indicate Article Number(s) and/or Article Title(s) being amended, added or deleted: **(BE SPECIFIC)**

See attached Amended and Retated Articles of Incorporation

(Attach additional pages if necessary)

If an amendment provides for 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)

(continued)

H06000240176

H06000240176

The date of each amendment(s) adoption: as of September 28, 2006Effective date if applicable: _____
(no more than 90 days after amendment file date)

Adoption of Amendment(s) (CHECK ONE)

- ☒ The amendment(s) was/were approved 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.

Signature

Joseph B. Foltz, with Art Secy
(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)

Joseph B. Foltz

(Typed or printed name of person signing)

Assistant Secretary

(Title of person signing)

FILING FEE: \$35

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H06000240176

**AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF
RCK FLAGLER, INC.**

The undersigned Vice-President of RCK Flagler, Inc. hereby files these Amended and Restated Articles of Incorporation, which have been duly approved by the shareholders and directors of the Corporation.

ARTICLE I.

The name of the Corporation shall be:

RCK Flagler, Inc.

ARTICLE II.

The principal place of business and mailing address of this Corporation shall be:

95 Cordova Street
St. Augustine, Florida 32084

ARTICLE III.

The purpose for which the Corporation is organized, subject to the provisions of Section 607.0301 of the Florida Business Corporation Act, is solely to acquire, manage, own and hold the General Partnership interest in The Flagler Resort, Ltd., a Florida limited partnership (the "Partnership"), and to act as the general partner in the Partnership with all of the rights, powers, obligations and liabilities of general partner under the limited partnership agreement of such Partnership (the "Limited Partnership Agreement") and to take any and all actions and do any and all things necessary or appropriate to the accomplishment of same.

ARTICLE IV.

The aggregate number of shares that the Corporation shall have the authority to issue is 10,000 shares of common stock with the par value of \$1.00 per share.

No shareholder of the Corporation shall have the right of cumulative voting at any election of directors or upon any other matter.

No holder of securities of the Corporation shall be entitled as a matter of right, preemptive or otherwise, to subscribe for or purchase any securities of the Corporation now or hereafter authorized to be issued, or securities held in the treasury of the Corporation, whether issued or sold for cash or other consideration or as a dividend or otherwise. Any such securities may be issued or disposed of

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by the Board of Directors to such persons and on such terms as in its discretion it shall deem advisable.

ARTICLE V.

The Corporation will not commence business until it has received for the issuance of its shares consideration of the value of not less than One Thousand and no/100 Dollars (\$1,000.00), consisting of money, labor done or property actually received.

ARTICLE VI.

The street address of the Corporation's initial registered office is 1200 South Pine Island Road, Plantation, Florida 33324, and the name of its initial registered agent at such address is CT Corporation System.

ARTICLE VII.

The number of directors constituting the Board of Directors is two (2), including the Independent Director as set forth in Article X below, and the name and address of the persons who are to serve as directors from the date of filing of these Amended and Restated Articles until the next annual meeting of the shareholders or until their successors are elected and qualified are:

| <u>NAME</u> | <u>ADDRESS</u> |
|---|--|
| Richard C. Kessler | 4901 Vineland Road, Suite 650 Orlando, Florida 32811 |
| Robert K. Rowell (or such other individual appointed by NRAI Entity Services, LLC) | 100 Canal Pointe Boulevard, Suite 108 Princeton, New Jersey 08540 |

ARTICLE VIII.

No director shall be liable to the Corporation or its shareholders for monetary damages for an act or omission in the director's capacity as a director, except that this Article does not eliminate or limit the liability of a director to the extent the director is found liable for:

- (1) a breach of the director's duty of loyalty to the Corporation or its shareholders;
- (2) an act or omission not in good faith that constitutes a breach of duty of the director to the Corporation or an act or omission that involves intentional misconduct or a knowing violation of the law;

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- (3) a transaction from which the director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of the director's office; or
- (4) an act or omission for which the liability of the director is expressly provided by an applicable statute.

Any repeal or modification of this Article by the shareholders of the Corporation shall be prospective only and shall not adversely affect any limitation on the liability of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE IX.

Any action required by the Florida Business Corporation Act to be taken at any annual or special meeting of shareholders, or any action which may be taken at any annual or special meeting of shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which the holders of all shares entitled to vote on the action were present and voted. Any such written consents shall be executed, dated, and filed with the Corporation in the manner required by Section 607.0706 of the Florida Business Corporation Act.

ARTICLE X.

The Corporation shall at all times while any indebtedness remains outstanding by the Partnership to Bear Stearns Commercial Mortgage, Inc. ("Lender") observe the applicable requirements for the recognition of the Corporation as a legal entity separate from any partners to the Partnership ("Partners") and Affiliates (as defined below), including, without limitation, as follows:

- (i) shall not own any real property;
- (ii) shall not engage in, seek, consent to or permit (A) any dissolution, winding up, liquidation, consolidation or merger, or (B) any transfer of its partnership or membership interests except as permitted under the loan agreement ("Loan Agreement") between the Partnership and Lender;
- (iii) shall not without the vote of the Independent Director (as defined in the Loan Agreement, initially Robert K. Rowell) (A) 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 relief under any laws relating to the relief from debts or the protection of debtors generally, file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings; (B) seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the entity or a substantial portion of its property; (C) make an assignment for the benefit of the creditors of the entity; or (D) take any action in furtherance of any of the foregoing;
- (iv) shall at all times remain solvent and shall pay its debts and liabilities (including, a fairly-allocated portion of any personnel and overhead expenses that it shares

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with any Affiliate) from its assets as the same shall become due, and 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;

(v) shall not fail to correct any actually 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 or entity;

(vi) shall maintain its bank accounts, books of account, books and records separate from those of any other person or entity and, to the extent that it is required to file tax returns under applicable law, shall file its own tax returns, except to the extent that it is required by law to file consolidated tax returns and, if it is a corporation, has not filed and shall not file a consolidated federal income tax return with any other corporation, except to the extent that it is required by law to file consolidated tax returns;

(vii) shall maintain its own records, books, resolutions and agreements;

(viii) shall not commingle its funds or assets with those of any other person or entity and has not participated and shall not participate in any cash management system with any other person or entity;

(ix) shall hold its assets in its own name;

(x) 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 Partnership, except for business conducted on behalf of itself by another person or entity under a business management services agreement that is on commercially-reasonable terms;

(xi) (A) shall maintain its financial statements, accounting records and other entity documents separate from those of any other person or entity; (B) has shown and shall show, in its financial statements, its asset and liabilities separate and apart from those of any other person or entity; 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 except as required by GAAP; provided, however, that any such consolidated financial statement contains a note indicating that the Corporation's separate assets and credit are not available to pay the debts of such Affiliate and that the Corporation's liabilities do not constitute obligations of the consolidated entity;

(xii) 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;

(xiii) shall observe all corporate formalities;

(xiv) shall not assume or guarantee or become obligated for the debts of any other person or entity, has not held out and shall not hold out its credit as being available to satisfy the obligations of any other person or entity or has not pledged and shall not pledge its

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assets for the benefit of any other person or entity, in each case except as permitted under the Loan Agreement;

(xv) shall not acquire obligations or securities of its partners, members or shareholders or any other owner or Affiliate;

(xvi) 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;

(xvii) 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 corporation's agent;

(xviii) 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 Partnership and not as a division or part of any other person or entity;

(xix) 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 or affiliate;

(xx) shall not make loans to any person or entity other than the Partnership 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);

(xxi) 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 or entity;

(xxii) other than capital contributions and distributions permitted under the terms of its organizational documents, shall not enter into or be a party to, any transaction with any of its shareholders or Affiliates except in the ordinary course of its business and on terms which are commercially reasonable terms comparable to those of an arm's-length transaction with an unrelated third party;

(xxiii) shall consider the interests of its creditors in connection with all corporate actions;

(xxiv) shall not have any of its obligations guaranteed by any Affiliate except as provided by the Loan Agreement; and

(xxv) shall not form, acquire or hold any subsidiary, except that the Corporation may acquire and hold its interest in the Partnership.

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"Affiliate" shall mean, as to any person or entity, any other person or entity that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such person or entity or is a director or officer of such person or entity or of an Affiliate of such person or entity.

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

In the event of the death, incapacity, resignation or removal of the Independent Director, the Board of Directors shall promptly appoint a replacement Independent Director. In addition, no Independent Director may be removed unless his or her successor has been elected.

ARTICLE XI.

The directors of the Corporation shall be indemnified by the Corporation to the full extent provided or permitted by Section 607.0850, Florida Business Corporation Act; provided such indemnification shall be subordinate to any indebtedness that remains outstanding to Lender.

ARTICLE XII.

Notwithstanding anything to the contrary, the Corporation may not amend Articles VII or X hereof or Article I-A of the Limited Partnership Agreement, so long as any indebtedness remains outstanding to the Lender by the Corporation or the Partnership, unless the Lender consents to such amendment in writing. Such consent of the Lender is a prerequisite to such amendment becoming effective.

Executed by the undersigned Vice-President of the Corporation on this 28th day of September, 1998.



Day B. Dantzer, Vice-President

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