

Florida Department of State
Division of Corporations
Electronic Filing Cover Sheet

Note: Please print this page and use it as a cover sheet. Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H12000021787 3)))



H120000217873ABC

Note: DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To:

Division of Corporations
Fax Number : (850) 617-6380

From:

Account Name : MELAND RUSSIN & BUDWICK, P.A.
Account Number : I20040000113
Phone : (305) 358-6363
Fax Number : (305) 358-1221

Enter the email address for this business entity to be used for annual report mailings. Enter only one email address please

Email Address: _____

RECEIVED

12 JAN 26 AM 8:11

RECEIVED
TALLAHASSEE, FLORIDA

COR AMND/RESTATE/CORRECT OR O/D RESIGN
RIO APARTMENTS, INC.

Certificate of Status	0
Certified Copy	1
Page Count	06
Estimated Charge	\$43.75

Amend/cc
@ 1/26/12

Electronic Filing Menu

Corporate Filing Menu

Help

FILED
SECRETARY OF STATE
DIVISION OF CORPORATIONS
12 JAN 26 PM 2:22

CERTIFICATE OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
RIO APARTMENTS, INC., a Florida corporation

Pursuant to the provisions of Section 607.1003 of the Florida Business Corporation Act, the undersigned Corporation adopts the following Certificate of Amendment to its Articles of Incorporation:

1. The name of the corporation is RIO APARTMENTS, INC., a Florida corporation (the "Corporation").

2. The Articles of Incorporation were filed on August 28, 1991 and assigned document number H91000003401.

3. The Amendment to the Articles of Incorporation set forth below was adopted by all of the Directors of the Corporation with unanimous Shareholder approval.

4. The Corporation's Articles of Incorporation are hereby amended as follows: Articles XII, XIII and XIV are hereby deleted in their entirety and a new Article XII titled "Special Purpose Provisions" is hereby added, to read as follows::

ARTICLE XII
SPECIAL PURPOSE PROVISIONS

Notwithstanding any other provision in these Articles of Incorporation (these "Articles"), the bylaws of the Corporation or any other documents governing the Corporation:

A. The purposes for which the Corporation is organized are limited solely to: (a) ownership, management and operation of certain property located at 8801-8871 Fontainebleau Blvd., Miami, Florida commonly known as "Rio Apartments" (the "Property"), and (b) transacting any and all lawful business for which a corporation may be organized under the laws of the State of Florida that is incident, reasonable and appropriate to accomplish the foregoing.

B. Until such time as all obligations (the "Debt") of the Corporation represented by the note payable (the "Note") to Ladder Capital Finance LLC or one of its affiliates (as applicable, the "Lender," which term includes its transferees, successors and assigns) and the Loan Agreement between the Corporation and Lender (the "Loan Agreement") and secured by one or more mortgages, deeds of trust, or deeds to secure debt (collectively, the "Instruments") on the Property and by other related loan documents, in each case in favor of Lender (collectively with the Instruments, the "Loan Documents"), shall be discharged and the Lien of the Instruments and the other Loan Documents shall be released from the Property:

1. The Corporation shall not do any of the following without the affirmative vote of 100% of the members of its Board of Directors, which Board of Directors (always containing an Independent Director) (as hereinafter defined)) is required to consider the interests of creditors of the Corporation when conducting such vote:

(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;

(c) take any action that might cause such entity to become insolvent;

(d) make an assignment for the benefit of creditors;

(e) take any action in furtherance of the foregoing subparagraphs (a) through (d);

2. The following provisions shall control:

a. The Corporation shall not own any asset or property other than (i) the Property, and (ii) incidental personal property necessary for the ownership or operation of the Property.

b. The Corporation shall not engage in any business other than the ownership, management and operation of the Property and the Corporation will conduct and operate its business as presently conducted and operated.

c. Except as may be expressly permitted by the terms and conditions of the Loan Agreement, the Corporation will not enter into any contract or agreement with any Affiliate (as defined in the Loan Agreement) of the Corporation, any constituent party of the Corporation or any Affiliate of any constituent party, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

d. The Corporation will not incur any indebtedness (as defined in the Loan Agreement) other than (i) the Debt (as defined in the Loan Agreement) and (ii) unsecured trade payables and operational debt not evidenced by a note and in an aggregate amount not exceeding one percent (1%) of the original principal amount of the Loan at any one time; provided that any indebtedness incurred pursuant to subclause (ii) shall be (x) not more than sixty (60) days past due and (y) incurred in the ordinary course of business (the indebtedness described in the foregoing clauses (i) and (ii) is referred to herein, collectively, as "Permitted Indebtedness"). No Indebtedness other than the Debt may be secured (subordinate or *pari passu*) by the Property.

e. Except as may be expressly permitted by the terms and conditions of the Loan Agreement, the Corporation will not make any loans or advances to any third party (including any Affiliate or constituent party), and has not and shall not acquire obligations or securities of its Affiliates.

f. The Corporation will remain solvent and the Corporation will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from

its assets as the same shall become due.

g. The Corporation will do all things necessary to observe organizational formalities and preserve its existence, and the Corporation will not (i) terminate or fail to comply with the provisions of its organizational documents, or (ii) unless (A) Lender has consented and (B) following a Securitization of the Loan, the applicable Rating Agencies (as defined in the Loan Agreement) have issued a Rating Agency Confirmation (as defined in the Loan Agreement) in connection therewith, amend, modify or otherwise change its partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents.

h. The Corporation will maintain all of its books, records, financial statements and bank accounts separate from those of its Affiliates and any other Person (as defined in the Loan Agreement). The Corporation's assets will not be 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 provided that (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. The Corporation will 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. The Corporation shall maintain its books, records, resolutions and agreements as official records.

i. The Corporation will 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. The Corporation will 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.

k. Neither the Corporation nor any constituent party will seek or effect the liquidation, dissolution, winding up, consolidation, asset sale, or merger, in whole or in part, of the Corporation.

l. Except as may be permitted or required pursuant to the Loan Documents (as defined in the Loan Agreement), the Corporation will not commingle the funds and other assets of the Corporation with those of any Affiliate or constituent party or any other Person, and has held and will hold all of its assets in its own name.

m. The Corporation will 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. Except as may be permitted or required pursuant to the Loan Documents, the Corporation will not assume or guarantee or become obligated for the debts

of any other Person 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. Intentionally reserved.

p. The Corporation will not permit any Affiliate or constituent party independent access to its bank accounts.

q. The Corporation shall pay the salaries of its own employees (if any) from its own funds and maintain a sufficient number of employees (if any) in light of its contemplated business operations.

r. The Corporation shall 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.

s. The Corporation, without the unanimous consent of all of its Shareholders, will not (i) file a bankruptcy, insolvency or reorganization petition or otherwise institute insolvency proceedings 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 such entity or for all or any portion of the Corporation's properties, (iii) make any assignment for the benefit of the Corporation's creditors, or (iv) take any action that might cause the Corporation to become insolvent.

t. Except as may be expressly permitted by the terms and conditions of the Loan Agreement, the Corporation will maintain an arm's-length relationship with its Affiliates.

u. The Corporation will allocate fairly and reasonably shared expenses, including shared office space.

v. Except as may be permitted or required pursuant to the Loan Documents, the Corporation has not pledged and will not pledge its assets for the benefit of any other Person.

w. The Corporation has no, and will have no, obligation to indemnify its officers, directors or members, as the case may be, or any such obligation shall be fully subordinated to the Debt and will not constitute a claim against it if cash flow in excess of the amount required to pay the Debt is insufficient to pay such obligation.

x. The Corporation and each Independent Director will consider the Interests of the Corporation's creditors in connection with all corporate actions.

C. The Corporation's Board of Directors shall at all times have at least one member who is an "Independent Director." Independent Director shall mean, when used with respect to any person or entity (as hereinafter defined and including, without limitation, any relative or spouse of such person or entity, or any relative of such spouse who has the same home as such person or entity) who:

(i) Is in fact independent;

(ii) shall be a natural person who is (A) provided by a nationally recognized professional service company or (B) approved in writing by the Lender (which consent shall not

be unreasonably withheld, conditioned or delayed); and

(iii) is not, at the time of such individual's appointment or at any time while serving as an Independent Director, and may not have been at any time during the preceding five (5) years:

(a) a stockholder, director (other than as an Independent Director), officer, employee, member, attorney or counsel of the Corporation or any affiliate of either of them,

(b) a customer, supplier or other person or entity who derives any of its purchases or revenues from its activities with the Corporation or any affiliate of either of them,

(c) a person or entity or other entity controlling or under common control with any such stockholder, member, customer, supplier or other person or entity,

(d) a member of the immediate family of any such stockholder, director, officer, employee, member, customer, supplier or other person or entity, or

(e) otherwise affiliated with the Corporation or any stockholder, director, officer, employee, member, attorney or counsel of the Corporation or any guarantor.

For the purposes of the definition of Independent Director, "nationally recognized professional service company" includes Corporation Services Company, CT Corporation, National Registered Agents, Inc. and Independent Director Services, Inc. As used in this definition, 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 such person or entity, whether through ownership of voting securities, by contract or otherwise.

D. Notwithstanding provision of law to the contrary, no obligation of the Corporation to indemnify its directors and/or officers shall constitute a claim against the Corporation until such time as all obligations of the Corporation under the Note are discharged and any lien of the Instruments and the other Loan Documents are released from the Property.

E. This Certificate has been amended as set forth herein for the express reason that the same was required by the Lender and would not have occurred in absence of such Lender's requirements. The provisions of this Article XII are intended for the express benefit of the Lender, who shall have full standing to challenge any violation of such provisions.

F. The board of directors of the Corporation shall not take any action which, under the terms of any certificate of incorporation, by-laws or any voting trust agreement with respect to any common stock, requires a unanimous vote of the board of directors of the Corporation unless at the time of such action there shall be at least one member of the board of directors who is an Independent Director (and such Independent Director has participated in such vote).

G. To the fullest extent permitted by law, the Independent Directors shall consider only the interests of the Borrower, including the Lender and its other creditors, and not the interests of any member of the Borrower, any shareholder of the Corporation, or any other direct or indirect beneficial owner of the Borrower, in acting or otherwise voting on the matters referred to in Article XII(B)(1) hereof.

H. No resignation or removal of any Independent Director, and no appointment of any successor Independent Director, shall be effective until Lender shall have consented in

writing to such appointment (which consent shall be deemed given if the successor Independent Director is provided by a nationally recognized professional services provider and otherwise shall not be unreasonably withheld, conditioned or delayed), provided, however, that no Independent Director shall resign or be removed, and no successor Independent Director shall be appointed, without in each case at least fifteen (15) day's prior written notice to the Lender.

I. The Corporation shall not amend the provisions specified in Article XII without the consent of the Lender, its successors or assigns, or, after the securitization of the Debt only if the Corporation receives (i) confirmation from each of the applicable rating agencies that such amendment would not result in the qualification, withdrawal or downgrade of any securities rating and (ii) approval of such amendment by the Lender, its successor or assigns.

J. No distributions or dividends shall be paid other than from net cash flow following repayment of all amounts due under the Loan Agreement and the other Loan Documents (as defined in the Loan Agreement).

K. No transfers or assignments of any interests in the Corporation may be made other than in accordance with the terms and conditions set forth in the Loan Agreement.

5. Except as hereby amended, the Articles of Incorporation of the Corporation shall remain the same.

The undersigned has executed this Certificate of Amendment as of the 1th day of December, 2011.

CORPORATION:

RIO APARTMENTS, INC., a Florida
corporation

By: 
Belinda Mieruelo, as President