# Delaware



*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "HAMMONS OF ROGERS INC.", FILED IN THIS OFFICE ON THE TENTH DAY OF MAY, A.D. 2007, AT 12:58 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

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AUTHENTICATION: 5665628

DATE: 05-10-07

**CERTIFICATE OF AMENDMENT TO THE**

**CERTIFICATE OF INCORPORATION OF**

**HAMMONS OF ROGERS INC.**

[Delaware Charter No. 4341748]

Hammons of Rogers Inc. a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "**Act**"), DOES HEREBY CERTIFY THAT:

1. The foregoing amendment was duly adopted by the Board of Directors in accordance with the provisions of Section 141 of the Act, and by the shareholders of the corporation in accordance with the provisions of Sections 228 and 242 of the Act.

2. Said amendment adds the following ARTICLE ELEVENTH to the Certificate of Incorporation after ARTICLE TENTH:

**ELEVENTH:** Notwithstanding anything to the contrary in this Certificate of Incorporation or any other document governing the formation, management or operation of the Corporation to the contrary, the requirements set forth in this ARTICLE ELEVENTH shall be complied with by the Corporation for so long as any obligations under the promissory note (as amended, modified or supplemented from time to time, the "**Note**") made by JQH – Rogers Convention Center Development, LLC, a Missouri limited liability company (the "**Company**"), in favor of Barclays Capital Real Estate Inc., a Delaware corporation ("**Lender**"), evidencing the loan (the "**Loan**") from Lender to the Company or any of the other documents evidencing, securing, or governing the Loan (collectively with the Note, the "**Loan Documents**") remain outstanding and until such time as all liens against the "Property" (as defined in the Loan Agreement by and between the Company and Lender governing the Loan (the "**Loan Agreement**")) created under the Loan Documents are required to be released:

A. The Corporation has not and shall not:

(1) engage in any business or activity other than the ownership of its interest in the Company, and activities incidental thereto;

(2) acquire or own any material asset other than its interest in the Company;

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Secretary of State
Division of Corporations
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(3) merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(4) (i) fail to observe its organizational formalities or 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 qualification to do business in the states where the Property is located, if applicable, or (ii) without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of the Company's Operating Agreement, Articles of Organization or similar organizational documents or the Corporation's By-Laws, Certificate of Incorporation or similar organizational documents;

(5) own any subsidiary or make any investment in, any person or entity without the consent of Lender, except that the Corporation may be the managing member of the Company;

(6) except as otherwise expressly permitted by the Loan Agreement, commingle its assets with the assets of any of its members, general partners, affiliates, principals or of any other person or entity, participate in a cash management system with any other entity or person or fail to use its own separate stationery, telephone number, invoices and checks;

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

(8) become insolvent and fail to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due, provided, however, that this provision shall not require the Corporation to make any additional capital contributions to the Company;

(9) (i) fail to maintain its records (including financial statements), books of account and bank accounts separate and apart from those of the members, general partners, principals and affiliates of the Company or of the Corporation, as the case may be, the affiliates of a member, general partner or principal of the Company or of the

Corporation, as the case may be, and any other person or entity, (ii) permit its assets or liabilities to be listed as assets or liabilities on the financial statement of any other entity or person or (iii) include the assets or liabilities of any other person or entity on its financial statements, except, in each case, where consolidated financial statements are permitted or required by applicable law or GAAP, provided that such consolidated financial statements shall reflect that such persons or entities are separate legal entities;

(10) except for the Loan Documents (as defined in the Loan Agreement) and the limited Company agreement of the Company, enter into any contract or agreement with any member, general partner, principal or affiliate of the Company or of the Corporation, as the case may be, or any member, general partner, principal or affiliate thereof (other than the Management Agreement (as defined in the Loan Agreement) and a business management services agreement with an affiliate of the Company, provided that (i) such agreement is acceptable to Lender, (ii) the manager, or equivalent thereof, under such agreement holds itself out as an agent of the Company and (iii) the agreement meets the standards set forth in this subsection 10 following this parenthetical), except upon terms and conditions that are commercially reasonable, intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any member, general partner, principal or affiliate of the Company or of the Corporation, as the case may be, or any member, general partner, principal or affiliate thereof;

(11) seek the dissolution or winding up in whole, or in part, of the Company or of the Corporation, as the case may be;

(12) fail to correct any known misunderstandings regarding the separate identity of the Company, or of the Corporation, as the case may be, or any member, general partner, principal or affiliate thereof or any other person;

(13) guarantee or become obligated for the debts of any other entity or person or hold itself out to be responsible for the debts of another entity or person other than as set forth in the Loan Agreement;

(14) make any loans or advances to any third party, including any member, general partner, principal or affiliate of the

Company or of the Corporation, as the case may be, or any member, general partner, principal or affiliate thereof, and shall not acquire obligations or securities of any member, general partner, principal or affiliate of the Company or of the Corporation, as the case may be, or any member, general partner, or affiliate thereof;

(15) fail to file its own tax returns or be included on the tax returns of any other person or entity except as required by applicable law;

(16) fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely in its own name or a name franchised or licensed to it by an entity other than an affiliate of the Company or of the Corporation, as the case may be, and not as a division or part of any other entity in order not (i) to mislead others as to the identity with which such other party is transacting business, or (ii) to suggest that the Company or the Corporation, as the case may be, is responsible for the debts of any third party (including any member, general partner, principal or affiliate of the Company, or of the Corporation, as the case may be, or any member, general partner, principal or affiliate thereof);

(17) fail 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 this provision shall not require the Corporation to make any additional capital contributions to the Company;

(18) share any common logo with (other than the JQH family logo) or hold itself out as or be considered as a department or division of (i) any general partner, principal, member or affiliate of the Company or of the Corporation, as the case may be, (ii) any affiliate of a general partner, principal or member of the Company or of the Corporation, as the case may be, or (iii) any other person or entity, other than in connection with the filing of a consolidated return or returns;

(19) 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 or if such invoices for such services are not allocated and separately billed to each entity, fail to have a

system in place that provides that the amount thereof is to be allocated among the relevant parties and will be reasonably related to the services provided to each such party;

(20) pledge its assets for the benefit of any other person or entity;

(21) fail to maintain a sufficient number of employees in light of its contemplated business operations;

(22) fail to provide in its certificate of incorporation that for so long as the Loan made to the Company is outstanding pursuant to the Note, the Loan Agreement and the other Loan Documents, it shall not 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, or make an assignment for the benefit of creditors without the affirmative vote of both of the Independent Directors (defined below);

(23) fail to hold its assets in its own name;

(24) fail to consider the interests of its creditors in connection with all corporate actions to the extent permitted by applicable law;

(25) have any of its obligations guaranteed by an affiliate;

(26) violate or cause to be violated in any material way any of the assumptions made with respect to the Company in the Insolvency Opinion (as defined in the Loan Agreement) in any respect material to the separateness of legal entities and the opinions expressed therein;

(27) fail at any time to have at least two Independent Directors;

(28) permit its board of directors to 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 the unanimous vote of one hundred percent (100%) of the members of the board unless at the time of such action there shall be at least two members who are Independent Directors.

B. The Corporation will not take any of the following actions (collectively "**Restricted Actions**") without the prior unanimous

written consent or affirmative vote of all of the members of the board of directors of the Corporation, including the Independent Directors:

(1) 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, or make an assignment for the benefit of creditors with respect to itself or with respect to the Company or cause the Company to 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, or make an assignment for the benefit of creditors; or

(2) amend any provision of the organizational documents of the Corporation relating to matters set forth in this ARTICLE ELEVENTH or cause the Company to amend any provision of the organizational documents of the Company relating to matters set forth in Section 6.2 of the operating agreement of the Company.

As used in this ARTICLE ELEVENTH, **"Independent Directors"** shall mean the individual directors of the Corporation, each of which is a natural person who is not and has not been for at least five (5) years: (a) a stockholder, director, officer, employee, partner, member, attorney or counsel of the Company or of the Corporation or any affiliate of either of them (other than with respect to such Independent Director's service as an independent director, member or manager of the Corporation or any of its affiliates); (b) a creditor, customer, supplier or other person who derives any of its purchases, profits or revenues (other than any fee paid to such director as compensation for such director to serve as an Independent Director) from its activities with the Company, the Corporation or any affiliate of either of them (a **"Business Party"**); (c) a person or other entity controlling or under common control with any such stockholder, partner, member, creditor, customer, supplier, director, officer, attorney, counsel or Business Party; or (d) a member of the immediate family of any such stockholder, director, officer, employee, partner, member, attorney, counsel or Business Party. As used herein, the term "control" means 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.

C. The Corporation may not take any action which, under the terms of this Certificate of Incorporation, the by-laws of the Corporation or any voting trust agreement with respect to any common stock, requires the unanimous vote of one hundred percent (100%) of the members of the board of directors unless all of the members of the board of directors of the Corporation, including the Independent Directors, shall have participated in such vote.

D. The Independent Directors shall vote solely with respect to matters relating to Restricted Actions and shall have no authority or power to vote on any other matter requiring the vote of the board of directors.

IN WITNESS WHEREOF, the undersigned authorized officer of Hammons of Rogers Inc. has caused this Certificate of Amendment to be signed this 10th day of May, 2007.

John Q. Hammons
President

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